

1 CIVIL DISTRICT COURT  
2 PARISH OF ORLEANS  
3 STATE OF LOUISIANA  
4  
5  
67 GLORIA SCOTT AND \*  
8 DEANIA JACKSON, \*  
9 \* NO. 96-8461  
10 VERSUS \* DIVISION "I"  
11 \* SECTION 14  
12 THE AMERICAN TOBACCO \*  
13 COMPANY, INC., ET AL. \*  
14  
15  
1617 Transcript of proceedings before the  
18 Honorable Richard J. Ganucheau, Judge Pro Tempore,  
19 Civil District Court, Parish of Orleans, State of  
20 Louisiana, 421 Loyola Avenue, New Orleans, Louisiana  
21 70112, commencing on June 18, 2001.  
22  
23  
24  
25  
2627 \* \* \* \* \*  
28 Thursday Morning Session  
29 February 27, 2003  
30 9:33 a.m.  
31 \* \* \* \* \*  
321 I N D E X  
2 Witness Page  
3 ANDREW J. SCHINDLER  
4 Examination via  
videotaped deposition 15181  
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REPORTED BY:

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1

Thursday Morning Session

2

February 27, 2003

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9:33 a.m.

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\* \* \* \* \*

5

P R O C E E D I N G S

6

\* \* \* \* \*

7

(In open court with a jury present:)

8

THE COURT:

9

Good morning.

10

Are the plaintiffs ready to continue  
with the presentation of evidence?

11

MR. CARTER:

12

We are, Your Honor. Thank you.

13

Good morning, Your Honor.

14

THE COURT:

15

Good morning.

16

MR. CARTER:

17

Good morning, ladies and gentlemen of  
the jury.

18

Your Honor, plaintiffs would like to  
again read a few documents. We promise  
you it won't take a long time.

19

And if Your Honor pleases, we would  
like to go back to Scott Exhibit 3476 to  
complete it. We have just a couple of  
short excerpts from it. We covered some  
of it yesterday. That's 3476.

20

If it could be displayed? I think  
it's already been admitted, Your Honor.

21

THE COURT:

22

You may publish it.

MR. CARTER:

15162

1 Carl, if you would again, kindly, for  
2 the members of the jury highlight the  
3 title?

4 Okay. This is a document, Smoker  
5 Psychology Program Review, it's dated  
6 October 19th, 1977.

7 Carl, if you would kindly go to page  
8 four of that document?

9 If Your Honor pleases, we would like  
10 to have it published.

11 THE COURT:

12 You may publish it.

13 MR. CARTER:

14 Carl, for the jury, in the third  
15 paragraph, just highlight the two lines  
16 that begin "Our task," and ends in "model"  
17 so we can keep it in context. And  
18 highlight it and enlarge it for the jury,  
19 please.

20 Our task is to understand the  
21 reinforcing mechanism, or process, whereby  
22 the habit is established and maintained.

23 Such is our model.

24 If Your Honor pleases, we would like  
25 to go to page five of that same document,  
26 3476?

27 THE COURT:

28 You may publish it.

29 MR. CARTER:

30 If you would, Carl, would you  
31 highlight for the jury the paragraph that  
32 begins "As I told you," I think it's about

15163

1 the fourth down, and ends in "fees"?

2 As I told you earlier, we are forced  
3 into making some judgmental decisions.

4 One important decision was to assume  
5 that Component X of the smoking act is  
6 likely to be found among the chemical  
7 compounds being introduced into the  
8 bloodstream.

9 This assumption has in large measure  
10 provided the structure and direction of  
11 our research program.

12 The assumption does not rule out  
13 other components of the act as important  
14 variables, but it does attribute a primary  
15 role to the active chemical compound.

16 Without the chemical compound, the  
17 cigarette market would collapse, PM --  
18 Philip Morris -- would collapse, and we'd  
19 all lose our jobs and our consulting fees.

20 MR. SHOLES:

21 Your Honor, may we approach?

22 THE COURT:

23 Yes.

24 (At sidebar: )

25 MR. SHOLES:

26 Judge, the first comment that we  
27 would make is that we didn't know that  
28 this document was going to be read today,

29 so we didn't bring our stuff with us.  
30 But more importantly, we had an  
31 agreement that Mr. Carter would only read  
32 what the document said. The document does

15164

1 not say Philip Morris, it says PM.  
2

3 We just want to caution and request  
4 the Court to once again to ask them to  
read just what's there.

5 THE COURT:

6 I guess I have a copy of that  
7 document. If you want my copy, I can try  
8 to get it for you if you want to do  
9 something?

10 MR. SHOLES:

11 No, I'm not going to worry about it.  
12

13 THE COURT:

14 The document is supposed to be  
verbatim. No editorial comments.

15 MR. CARTER:

16 Okay, Your Honor. Thank you.

17 (In open court:)

18 MR. CARTER:

19 Thank you, Your Honor.

20 If Your Honor pleases, that's the end  
21 of Document 3476 dated October 19, 1977.

22 If Your Honor pleases --

23 THE COURT:

24 Just a moment. Do defendants wish to  
25 present any portions of that document to  
26 the jury?

27 MR. SHOLES:

28 Not at this time, Judge.

29 THE COURT:

30 Thank you.

31 Mr. Carter?

32 MR. CARTER:

15165

1 If Your Honor pleases, we would like  
2 to have displayed Scott Exhibit 3074.  
3 3074.

4 We would like to have the first page  
5 published, Your Honor?

6 THE COURT:

7 Is that document in evidence?

8 MR. SHOLES:

9 The document has not been admitted in  
10 evidence yet, Judge. But we will stand on  
11 our previously submitted objections.

12 THE COURT:

13 Find the document for me, would you,  
14 3074?

15 The only objection I have noted at  
16 document 3074 authored by Dr. Wakeham is  
17 that not relevant.

18 And the objection is overruled.

19 MR. CARTER:

20 Thank you very much, Your Honor.

21 Your Honor, may the first page be  
22 published?

23 THE COURT:

24 Yes, you may publish it.

25 MR. CARTER:

26                   Thank you.

27                   If you would, Carl, highlight for the  
28                   jury the addressee and the date?

29                   The date is May 26, 1970. Senator  
30                   Earle Clements, the Tobacco Institute,  
31                   Washington, D.C. Dear Senator Clements.

32                   Carl, if you would highlight the

15166

1                   first paragraph, please?

2                   You may recall our conversation at  
3                   the time of the recent Philip Morris  
4                   annual meeting in Richmond and your  
5                   invitation that I drop you a note on my  
6                   thoughts concerning some of the problems  
7                   of the tobacco industry.

8                   Carl, it would be beneficial for the  
9                   jury if you highlighted the entire page.

10                   Would you kindly do that?

11                   I think we have spent too much time  
12                   and energy being, quote, negative, unquote  
13                   on the subject of smoking and health,  
14                   undermining our public image.

15                   We are carrying not only the cross of  
16                   big industry, but also the cross of being  
17                   against agencies, quote, working for the  
18                   good of the people, unquote, e.g., Public  
19                   Health, American Cancer Society, American  
20                   Heart Association, et cetera.

21                   Our medical research support efforts  
22                   through CTR and AMA have been confusing  
23                   and contradictory in the public eye  
24                   because we have on the one hand proclaimed  
25                   these endeavors to be aimed at, quote,  
26                   finding the truth, unquote, about smoking  
27                   and health, unquote, and at the same time  
28                   denied the existence of a problem.

29                   I am, therefore, advocating emphasis  
30                   on the positive aspects of smoking, both  
31                   in research and in public relations.

32                   Smoking is unquestionably

15167

1                   psychologically and physiologically  
2                   gratifying, parentheses, and therefore  
3                   beneficial, closed parentheses, to the  
4                   majority of smokers.

5                   We could do much more research on the  
6                   psychological and sociological aspects of  
7                   smoking. With a better understanding of  
8                   the gratifications associated with  
9                   smoking, we could stress these in our  
10                   public defense of the industry.

11                   I feel confident many smokers, our  
12                   best public supporters, will respond more  
13                   favorably to evidence that they have  
14                   justifiable psychological reasons for  
15                   smoking.

16                   My only other feeling along this line  
17                   is that our industry could develop a more  
18                   favorable public impression by letting it  
19                   be known that it is supporting quite a bit  
20                   of unrestricted medical research as a pro  
21                   bono publico gesture. This, in my  
22                   opinion, is actually the case with about

23 half of our CTR and AMA expenditures,  
24 parentheses, maybe not intentionally, but  
25 much of the grant work has little or no  
26 relevance to smoking and health in my  
27 opinion.

28 MR. SHOLES:

29 May I interrupt you for just a  
30 second, Mr. Carter?

31 May we approach for a moment?

32 THE COURT:

15168

1 Yes.

2 (At sidebar:)

3 MR. SHOLES:

4 I just want to protect the record. I  
5 didn't mean to interrupt again. I didn't  
6 realize you were going to read the next  
7 paragraph that has dollars figures in it.

8 Just for the sake of protecting the  
9 record, I want to maintain our objection  
10 as to the discussion of dollar figures.

11 MR. CARTER:

12 They have been using dollar figures  
13 throughout this trial, Your Honor. They  
14 have opened the door.

15 MR. STEPHEN HERMAN:

16 Yesterday in particular, Mr. Gay  
17 pointed out with Dr. Farone how much time,  
18 money and effort Philip Morris had been  
19 spending trying to develop later  
20 projects. They didn't have a 403  
21 objection to this then.

22 THE COURT:

23 This just may open the floodgates.  
24 And it's your case. I know how much time  
25 and money you have invested in it.

26 And think about all the ramifications  
27 of it. You have got an agreement not to  
28 talk about money. I have sanitized the  
29 demo to take the dollars out.

30 Now, for me to rule on this in this  
31 bench conference is not the best  
32 circumstance under which I should rule on

15169

1 something like this. I should have  
2 argument and I should do some research and  
3 listen to it.

4 I think it's a critical issue in the  
5 case, and I think you folks ought to  
6 consider it very, very carefully before  
7 you push hard on it.

8 MR. CARTER:

9 Your Honor, we have just considered  
10 it, and we are going to skip over it and  
11 go beyond it. Thank you.

12 (In open court:)

13 MR. RUSS HERMAN:

14 May I approach, Your Honor? May I  
15 approach?

16 THE COURT:

17 Yes.

18 (At sidebar:)

19 MR. RUSS HERMAN:

20 I was reading this, and I'm sorry to  
21 belabor this. But both in the Bible and  
22 the Szymanczyk depositions, Your Honor  
23 previously ruled that dollars would be an  
24 issue in this case and in one other  
25 deposition.

26 Once they raised the issue of money  
27 spent on research and development  
28 yesterday, these quotes, put a lot of  
29 money in cigarettes, by Mr. Gay; quote,  
30 all the money, time and effort by  
31 Mr. Wittmann; time, money and effort, a  
32 lot of time, money and effort, and evoked

15170

1 from the witness a billion dollar figure  
2 spent on research in Premier.

3 To exclude now 30 million dollars  
4 spent on research by CTR compared to a  
5 hundred million dollars a year in  
6 advertising we believe would be extremely  
7 prejudicial.

8 Once a party, if there was an  
9 agreement --

10 THE COURT:

11 Say that again?

12 MR. RUSS HERMAN:

13 I said if there ever was an  
14 agreement, the defendants have calculated  
15 to breach this agreement, and we are being  
16 prejudiced because the jury has no idea of  
17 the relative figures.

18 This document was made at an  
19 unsuspicious time, and it was the  
20 defendants' own document.

21 THE COURT:

22 Is there some dispute as to whether  
23 there has been an agreement in this case  
24 between plaintiffs and defendants to bring  
25 dollars up.

26 MR. RUSS HERMAN:

27 Absolutely.

28 THE COURT:

29 Then I'm going to have a hearing on  
30 it.

31 I don't know if you got what I said  
32 at the last conference, but it's fairly

15171

1 inefficient for me to have to decide this  
2 on a spur of the moment, without knowing  
3 it's coming and without any argument.

4 And when I said that and indicated  
5 that it was going to open the floodgates  
6 for this and asked Mr. Carter what his  
7 position was, he withdrew that paragraph.

8 MR. RUSS HERMAN:

9 That's what I'm --

10 THE COURT:

11 And if you are opposing that, just  
12 tell me and I will have to deal with it.

13 MR. CARTER:

14 Until such time as we can have a  
15 hearing on it.

16 MR. RUSS HERMAN:

17 Well, I don't think Your Honor in any  
18 case, certainly one as important as this,  
19 should ever be put in a position of having  
20 to rule when you feel that you need  
21 argument and time. We briefed it twice.  
22

THE COURT:

I am interested in knowing if either  
side believes there is some agreement, and  
if so, see the evidence of it.

And then I want to look and see what  
is necessary to open the door. And I  
can't do that mumbling, with you folks  
here mumbling to me.

MR. RUSS HERMAN:

We will reserve on that and not read  
the remainder of that document at this

15172

time.

MR. CARTER:

Right.

THE COURT:

Okay.

MR. RUSS HERMAN:

Thank you.

(In open court:)

MR. CARTER:

Thank you very much, Your Honor. And  
the plaintiffs will reserve reading the  
rest of Scott Exhibit 3074 for another  
time. That's 3074 dated May 26th, 1970.

Thank you.

THE COURT:

Do defendants wish to read any  
portion of that document to the jury at  
this point?

MR. SHOLES:

Not at this time, Your Honor.

THE COURT:

Okay.

MR. CARTER:

If Your Honor pleases, Scott Exhibit  
No. 3535, we would request that it be  
displayed.

THE COURT:

3535?

MR. CARTER:

Yes, Your Honor. It's a  
Philip Morris document, 3535.

MR. GAY:

15173

1 Objection, Your Honor.

2 MR. STEPHEN HERMAN:

3 I think it's in evidence, Your Honor.

4 THE COURT:

5 Approach the bench.

6 I heard an objection, I invited folks  
7 to approach the bench.

8 MR. SHOLES:

9 Mr. Carter said he would correct the  
10 problem, Your Honor.

11 THE COURT:

12 Okay. No bench conference necessary?

13 MR. CARTER:

14 Not this time, Your Honor.  
15 Your Honor, the plaintiffs would like  
16 to have page one of Scott Exhibit 3535 be  
17 published?

18 THE COURT:

19 Is the document in evidence?

20 MR. CARTER:

21 It is, Your Honor.

22 THE COURT:

23 Yes?

24 MR. GAY:

25 We believe it is, Your Honor.

26 MR. SHOLES:

27 We are advised it is.

28 THE COURT:

29 Is 3535 in evidence?

30 MR. SHOLES:

31 Yes, it is.

32 THE COURT:

15174

1 You may publish it.

2 MR. CARTER:

3 Carl, if you would, would you  
4 highlight the addressee and the date of  
5 this document?

6 Thank you.

7 And would you highlight to whose  
8 attention it was to go and the reference?

9 For the attention of Mr. P. McNally.  
10 Dear sirs, re: Quote, Superman II,  
11 unquote, hyphen, The Movie.

12 And if you would highlight for the  
13 jury the first two paragraphs of Exhibit  
14 3535?

15 This letter confirms the agreement  
16 that has been reached between our two  
17 companies whereby we have agreed to  
18 include in our feature film currently  
19 entitled, quote, Superman II, unquote,  
20 parens, The Film, closed parens, exposure  
21 of the Marlboro brand name, parens, the  
22 material, closed parens, on the following  
23 terms and conditions, colon.

24 The exposure of the material referred  
25 to above shall be effected in a major  
26 scene in the film involving, quote, Ursa,  
27 closed quote, parentheses, Sarah Douglas,  
28 closed parentheses, quote, General Zod,  
29 close quote, parens, Terrence Stamp,  
30 closed parens, and, quote, Superman,  
31 closed quote, parens, Christopher Reeve,  
32 closed parens, and will be filmed in

15175

1 accordance with the shooting script in  
2 scenes presently numbered 333 through 341,  
3 a copy of which is attached.

4 The size of the billboard referred to  
5 in the relevant scenes will be  
6 approximately twenty feet by ten feet and  
7 will be illuminated.

8 Carl, if you would for the jury go  
9 down to Paragraph No. 3 and highlight that  
10 portion that starts with "You" and ends

11 with "us." We are almost done. Thank  
12 you.

13 You will provide to us without any  
14 charge therefor and in due time as we  
15 shall notify you all necessary material  
16 and artwork, et cetera, that we may  
17 reasonably require to enable us to comply  
18 with our agreement hereunder provided  
19 that, if production of the film so  
20 requires, we shall be entitled to  
21 reproduce at our expense other material  
22 using the Marlboro logo style as used on  
23 the samples of your company's products  
24 and/or advertising material which you will  
25 supply to us.

26 If Your Honor pleases, we would like  
27 to publish the second page of Exhibit  
28 3535?

29 THE COURT:

30 You may publish it.

31 MR. CARTER:

32 Thank you, Your Honor.

15176

1 Carl, if you would highlight the top  
2 of the first writing on the top of the  
3 page above Paragraph 3?

4 And now if you would highlight  
5 Paragraph 3 beginning with "In" and ending  
6 in "name." Thank you.

7 In consideration of the exposure of  
8 material referred to in Clause 1 above,  
9 you agree to pay us the sum of 20,000  
10 pounds, parens, twenty thousand pounds  
11 sterling, closed parens, in the following  
12 installments:

13 First, 7,000, seven thousand pounds  
14 sterling, upon signature hereof.

15 Second, 13,000, thirteen thousand  
16 pounds sterling, upon viewing and approval  
17 by you at Pinewood Studios, England, of  
18 the edited footage containing the exposure  
19 referred to in the Clause 1 hereof to be  
20 included in the release print of the film.

21 Third, this approval shall be limited  
22 to verifying that the Marlboro brand name  
23 appears as defined in Scenes 333 through  
24 341, it being understood that the large  
25 billboard referred to therein is bearing  
the Marlboro brand name.

27 Carl, would you kindly highlight for  
28 the jury No. 4?

29 If there is any reference in the  
30 edited footage of the whole film that  
31 might reasonably be construed as  
32 detrimental to the Marlboro brand name, we

15177

1 shall remove all the exposure of the  
2 material from the release print of the  
3 film.

4 Your Honor, members of the jury,  
5 that's all we have of this exhibit  
6 No. 3535 dated the 18th of October, 1979.

7 THE COURT:

8                   Do defendants wish to read any  
9                   portions of that document to the jury?  
10                  MR. SHOLES:  
11                  We have no additions, Your Honor.  
12                  MR. CARTER:  
13                  If Your Honor pleases, at this time  
14                  we would like to present a CD of  
15                  Superman II, Scott Exhibit 3122.02.  
16                  Superman II.

17                  MR. SHOLES:  
18                  May we approach, Judge?  
19                  THE COURT:  
20                  Yes.  
21                  (At sidebar: )  
22                  THE COURT:  
23                  Mr. Sholes?  
24                  MR. SHOLES:  
25                  Judge, the CD was not on the list  
26                  that they gave us last night, so we are  
27                  rather caught by surprise by this.

28                  We haven't had a chance to look at  
29                  portions of this to see -- and we believe  
30                  that there may be portions of this that we  
31                  would want to play ourselves. We can't do  
32                  it in an orderly fashion to demonstrate

15178

1                  the points that would be relevant to the  
2                  jury.

3                  THE COURT:  
4                  Why wasn't it disclosed before this?  
5                  MR. STEPHEN HERMAN:  
6                  I gave the CD to Mr. Gay two weeks  
7                  ago because we thought we were going to  
8                  play it last week when we thought we were  
9                  going to play the Levy video.

10                 So Mr. Gay has had it for at least  
11                 two weeks to review.

12                 Christine tells me it is on the list.  
13                 MS. DeSUE:  
14                 It might be a duplicate exhibit  
15                 number, but it is was on the list.

16                 MR. RICHARDSON:  
17                 The CD has a number on it, and that  
18                 number was not on the list that was given  
19                 to me last night, so we didn't prepare for  
20                 anything today.

21                 MS. DeSUE:  
22                 There is definitely an exhibit number  
23                 that contained a CD number, though. So if  
24                 there is some confusion --

25                 MR. RICHARDSON:  
26                 Show it to me.  
27                 THE COURT:  
28                 Let me --  
29                 MR. CARTER:  
30                 Yes, Your Honor?  
31                 THE COURT:  
32                 Is 3535 on the list you were given

15179

1                 last night?  
2                 MR. RICHARDSON:  
3                 The document he just read, yes. The  
4                 video, no.

5 THE COURT:  
6 Well, let's see the list.  
7 MR. RICHARDSON:  
8 Your Honor?  
9 MS. DeSUE:  
10 Your Honor, my apologies. That was  
11 supposed to be on the list. It was not on  
12 the list. Defendants are correct.  
13 THE COURT:  
14 I'm not going to let you blindsight  
15 them, so --  
16 MR. CARTER:  
17 Thank you, Your Honor.  
18 THE COURT:  
19 -- the objection is sustained. You  
20 may not play the video.  
21 MR. CARTER:  
22 Okay.  
23 (In open court:)  
24 THE COURT:  
25 Mr. Carter?  
26 MR. CARTER:  
27 That's all we have, Your Honor, and  
28 I'm sorry we won't have any popcorn.  
29 Thank you very much.  
30 MR. LEGER:  
31 Good morning, Your Honor.  
32 Good morning, ladies and gentlemen of  
15180  
1 the jury.  
2 At this time -- my name is  
3 Walter Leger, by the way.  
4 At this time, Your Honor, we are  
5 going to present testimony of the next  
6 witness by video deposition.  
7 The deposition will be excerpts of a  
8 deposition taken on December 2nd in the  
9 year 2000, and it will be the deposition  
10 of the chief executive officer, present  
11 chairman of the board of R. J. Reynolds  
12 Tobacco Company and R. J. Reynolds  
13 Holdings, Inc.  
14 Your Honor, what we suggest is  
15 because of the point in time at which we  
16 have started, the deposition is going to  
17 go certainly past the break, we can play  
18 the deposition and, if Your Honor please,  
19 at break time at 12:45, we will stop at a  
20 convenient stopping point and take --  
21 THE COURT:  
22 10:45.  
23 MR. LEGER:  
24 I'm sorry, 10:45.  
25 Stop at that point, start again, and  
26 it should be finished by lunch.  
27 THE COURT:  
28 Do we need to turn the lights off to  
29 get a good image on the screen?  
30 MR. LEGER:  
31 I'm not so sure with this one,  
32 Judge. It's fairly clear.  
15181  
1 THE COURT:

2 Mr. Gianna says no. Let's give it a  
3 try with the lights on.  
4 Are you ready to proceed?  
5 MR. LEGER:  
6 We are ready to proceed, Your Honor.  
7 This is the testimony of Andrew  
8 Schindler.  
9 -- -- --

10 ANDREW J. SCHINDLER

11 being previously duly sworn and presented by  
12 videotaped deposition, testifies and says as  
13 follows:  
14 -- -- --

15 EXAMINATION

16 Q. Mr. Schindler, would you again  
17 state your name and address for the  
18 record, please?

19 A. Andrew J. Schindler,  
20 [DELETED].

21 Q. Mr. Schindler, what is your  
22 current employment and title, please?

23 A. I'm currently employed by R. J.  
24 Reynolds Tobacco Holdings as chairman and  
25 chief executive officer.

26 Q. Are you an officer of R. J.  
27 Reynolds Tobacco Company?

28 A. Yes, I am.

29 Q. And what is that office?

30 A. Chairman and CEO of R. J.  
31 Reynolds Tobacco Company.

32 Q. Of --

15182

1 A. Of both.

2 Q. So you are chairman and CEO of  
3 both R. J. Reynolds Holdings and R. J.  
4 Reynolds Tobacco Company?

5 A. Yes.

6 Q. And what is the corporate  
7 relationship of R. J. Reynolds Holdings  
8 and R. J. Reynolds Tobacco?

9 A. Well, R. J. Reynolds Tobacco  
10 Company is a wholly-owned subsidiary of  
11 R. J. Reynolds Tobacco Holdings  
12 Corporation.

13 Q. Okay. And do you have a boss  
14 that you report to? Is there someone  
15 that's superior?

16 A. Not an individual. I report to  
17 the board of directors of Reynolds Tobacco  
18 Holdings.

19 Q. Is there any relationship any  
20 longer between R. J. Reynolds Tobacco  
21 Holdings and any other company including  
22 not limited to RJR Nabisco?

23 A. No, there isn't any  
24 relationship.

25 Q. So the highest office the in  
26 R. J. Reynolds is held by you?

27 A. Yes.

28 Q. You are now the head man;  
29 correct?

30 A. Yes.

31 Q. Well, let me ask you this

first, Mr. Schindler. As the chairman of  
15183

1 the board of R. J. Reynolds Holdings,  
2 Inc., and the chief executive officer, as  
3 the chairman of the board of R. J.  
4 Reynolds Tobacco Company and the chief  
5 executive officer, do you have an opinion  
6 as to whether or not nicotine in your  
7 cigarettes are addictive?

8 A. Yes, I have an opinion.

9 Q. And you have previously given  
10 that opinion in testimony in other  
11 depositions, at trial; is that correct?

12 A. Yes.

13 Q. And your opinion is that  
14 cigarette smoking is addictive as the term  
15 is commonly used today; correct?

16 A. Yes, that's what I've testified  
17 to, and also I -- that's what I have  
18 testified to as it's used in everyday  
19 terminology today.

20 I've also said in conjunction with it  
21 I don't believe that cigarette's really  
22 hard drug addictions like heroin and  
23 cocaine.

24 Q. Have you talked to the research  
25 and development people at R. J. Reynolds  
26 Tobacco Company about the addictive  
27 properties of your product?

28 A. Yes.

29 Q. Have you talked to scientists  
30 and experts outside of your company about  
31 the addictive properties of your product?

32 A. No, not that I recall. I've

15184

1 talked quite a bit with our scientists in  
2 Reynolds.

3 Q. Do you generally rely upon the  
4 advice of your scientists and research and  
5 development people in formulating opinions  
6 such as your opinion regarding the  
7 addictive nature of your product?

8 A. Yes.

9 Q. And can you name one person,  
10 one doctor, one scientist in the United  
11 States that's not on the payroll of a  
12 tobacco company that would give the  
13 opinion that cigarette smoking and  
14 nicotine are not addictive?

15 A. No, I can't think of an  
16 individual, not in the everyday common use  
17 of the term.

18 Q. I'm sorry. Have you read any  
19 scientific literature or medical studies,  
20 one, that says that cigarette smoke and  
21 nicotine is not addictive?

22 A. None that I can think of, yes.

23 Q. Now, have you seen the Surgeon  
24 General's report of 1988?

25 A. I've not read it. I've  
26 probably looked at it over time.

27 Q. You know that the Surgeon  
28 General's report of 1988 says that

29                   nicotine is addictive; correct?

30                   A.     Yes.

31                   Q.     You know -- do you know what  
32                   the Surgeon General's report is?

15185

1                   A.     Do I know what it is?

2                   Q.     Yes.

3                   A.     It's the report by the Surgeon  
4                   General in this case put out periodically  
5                   relative to issues, medical issues  
6                   surrounding cigarette smoke, smoking.

7                   Q.     I'm going to show you a copy of  
8                   the Surgeon General's report of 1998, and  
9                   this is marked as Scott Exhibit No. 4279,  
10                  sir.

11                  Have you ever seen that document  
12                  before, I'm sorry, the 1988, have you seen  
13                  that Surgeon General's report before?

14                  A.     I believe I have.

15                  Q.     And have you read the portions  
16                  of it that refer to addiction?

17                  A.     I may have in the past, but I,  
18                  you know, I don't -- yeah, I may have. I  
19                  just don't specifically remember. I mean,  
20                  I didn't study it or --

21                  Q.     Certainly whether or not your  
22                  product is addictive is an important  
23                  question for you as the head man at the  
24                  tobacco company; correct?

25                  A.     Well, it's -- you know, it's an  
26                  issue that's been discussed. I've  
27                  acknowledged that the product's addictive  
28                  in the everyday common use of the term.

29                  Q.     And do you realize that the  
30                  Surgeon General has indicated one of the  
31                  most important findings in this report is  
32                  that it is addictive in a way more similar

15186

1                  to opium, heroin, cocaine and alcohol than  
2                  to caffeine; correct?

3                  A.     That may be. Our researchers  
4                  and scientists that I've talked to about  
5                  this do not share that same opinion.

6                  Q.     And have you gotten that  
7                  opinion from anyone other than someone  
8                  employed by your company?

9                  A.     I have not directly.

10                 Q.     Doctor, I'd like you to -- I'm  
11                 sorry. Mr. Schindler, I'd like you to  
12                 turn to page nine of that report. Do you  
13                 see Major Conclusions there?

14                 A.     Yes.

15                 Q.     Would you read those three  
16                 numbered paragraphs?

17                 A.     The major conclusions in this  
18                 report, one, cigarettes and other forms of  
19                 tobacco are addicting.

20                 Nicotine is the drug in tobacco that  
21                 causes addiction, and the pharmacologic  
22                 and behavioral processes that determine  
23                 tobacco addiction are similar to those  
24                 that determine addiction to drugs such as  
25                 heroin and cocaine.

26 Q. Mr. Schindler, you recognize  
27 those as major conclusions of the Surgeon  
28 General in 1998?  
29 A. That's what it says.  
30 Q. I'm sorry, 1988.

31 Would you be surprised to know that  
32 expert witnesses in this case retained by  
15187

1 your company and other tobacco companies  
2 have testified that the definition of  
3 addiction used commonly today is the  
4 definition the Surgeon General gave in  
5 1988?

6 A. Could you just repeat the  
7 question, please?

8 Q. All right. If you like, I can  
9 read you the testimony of your expert  
10 witnesses who testified that the  
11 definition of addiction given by the  
12 Surgeon General in 1988 is the definition  
13 most commonly used today. Would that  
14 surprise you?

15 A. No, but that's the definition  
16 you're talking about, not the summary  
17 Major Conclusions.

18 Q. Okay.

19 A. I think.

20 Q. Would you be surprised if  
21 expert witnesses of yours retained in this  
22 case testified that the major conclusions  
23 of the Surgeon General are agreed to by  
24 them?

25 A. No. I mean, I've not met the  
26 witnesses, I don't know what they've  
27 testified to. I don't even know what  
28 scientific disciplines they are.

29 And if those witnesses said what you  
30 said, would I be shocked or surprised or  
31 overwhelmed? No.

32 Q. Mr. Schindler, do you know that  
15188

1 the National Institute of Drug Abuse has  
2 concluded that your product is addictive  
3 in a similar form to heroin and cocaine?

4 A. No.

5 Q. Did you know that the American  
6 Psychiatric Association has determined  
7 that your product is a product capable of  
8 producing nicotine dependence?

9 A. I don't know that specifically.

10 Q. You know the term nicotine  
11 dependence, do you not?

12 A. Yes, I think so.

13 Q. You understand that it's used  
14 interchangeably by doctors and health  
15 professionals with the term addiction?

16 A. That may be.

17 Q. Do you know anything about the  
18 plaintiffs in this case, Ms. Gloria Scott  
19 and Deania Jackson?

20 A. Basically, I know they are the  
21 plaintiffs.

22 Q. Do you know or have you been

23 told what relief they are seeking in this  
24 case?

25 A. Yes, I have been briefed by my  
26 lawyers as to --

27 Q. You understand that this is a  
28 case involving smoking cessation and  
29 medical monitoring; correct?

30 A. That's -- yes, that's my  
31 understanding.

32 Q. Do you know that psychiatrists  
15189

2 retained by your companies, the tobacco  
3 companies, have diagnosed Ms. Scott as  
4 being nicotine dependent?

5 A. I don't know that. I didn't  
6 know that.

7 Q. Do you know that psychologists  
8 retained by you have diagnosed both  
9 Ms. Scott and Ms. Jackson as being  
10 nicotine dependent?

11 A. No, I didn't know that.

12 Q. Do you know that other  
13 psychiatrists have diagnosed Ms. Jackson  
14 and Ms. Scott as being nicotine dependent  
15 under the criterion of the American  
16 Psychiatric Association?

17 A. No, I didn't know that -- or  
18 don't know that.

19 Q. Mr. Schindler, you certainly  
20 are aware that there's been a significant  
21 controversy regarding the addictive nature  
22 of your product over a number of years;  
23 correct?

24 A. Yes, there's been a  
25 definitional debate. I don't know  
26 significant controversy. There isn't now.

27 Q. Do you think that there has not  
28 been a controversy in the context of  
29 whether or not your product should even be  
30 sold or manufactured because it contains  
31 an addictive drug?

32 A. That there's a controversy over  
whether or not it should be sold?

15190

1 Q. A political and public health  
2 controversy?

3 A. About the product being legal?

4 Q. Yes, sir.

5 A. I'm not aware of the public  
6 health community aggressively debating  
7 whether or not the product should be  
8 legal.

9 Q. Well --

10 A. I'm not, if that's what you are  
11 asking me.

12 Q. Is the product legal?

13 A. Is this product legal?

14 Q. Yes, sir.

15 A. Yes, by the federal government,  
16 by every state in the union that I know of  
17 the product is legal.

18 The federal government and state  
19 legislatures have said it's legal to sell

20 this product with full awareness of the  
21 risk of the product, the characteristics  
22 on how this product operates. It's legal.  
23

24 Q. How long have you been the  
25 president of one of these tobacco  
companies?

26 A. I became president and chief  
27 operating officer in June of '94.  
28

29 Q. And you were on the executive  
30 committee of R. J. Reynolds Tobacco  
Company in the late 1980s; correct?

31 A. Yes, starting in about October  
32 of 1988, as I recall.

15191

1 Q. And so you went on to the  
2 executive committee shortly after the  
3 Surgeon General released his report in  
4 1988 regarding the addictive nature of  
5 nicotine; correct?

6 A. Yeah, I guess so.

7 Q. Were you involved in any way in  
8 the supervision of lobbying efforts in the  
9 legislatures?

10 A. In 1988?

11 Q. Yes, sir.

12 A. No.

13 Q. Do you know that lobbyists on  
14 behalf of R. J. Reynolds Tobacco Company  
15 came down to Louisiana to lobby the  
16 legislature to change the very law that  
17 this case is brought under?

18 A. No, or I don't know or didn't  
19 know.

20 Q. Did you know that lobbyists on  
21 behalf of your company go all over the  
22 country lobbying legislators to change the  
23 laws for the benefit of your companies in  
24 connection with litigation?

25 A. I'm not -- no, I don't know the  
26 specifics of what you are talking about.

27 Q. But you know the generality,  
28 though?

29 A. Not -- not really in the way  
30 you are characterizing this. I'm not sure  
31 what you are talking about.

32 Q. You don't know that your  
15192  
1 company hires lobbyists to lobby the  
2 legislators --

3 A. Of course.

4 Q. You do know that?

5 A. Yes, we hire lobbyists.

6 Q. And you are involved in the  
7 assignment of those lobbyists; correct?

8 A. I don't -- I do not assign  
9 lobbyists. The person on my staff who's  
10 accountable for that area has that  
11 responsibility.

12 Q. And who is that?

13 A. Tommy Payne.

14 Q. And what is his status?

15 A. He's executive VP of external  
16 relations.

17 Q. And does he report directly to  
18 you?

19 A. Yes.

20 Q. And do you get periodic reports  
21 on the nature of laws being changed in the  
22 United States in connection with the use,  
23 sale, distribution, promotion, advertising  
24 or anything related to your product?

25 A. Well, of course we have updates  
26 on issues, whether it's, you know, in  
27 Congress in Washington or in specific  
28 states about legislation that may have  
29 some impact on how -- on our product and  
30 how we market it and so forth, of course.

31 Q. Mr. Schindler, do you think  
32 that it is wrong and a violation of your

15193

1 duty to the public to promote and  
2 advertise for the sale of cigarettes to  
3 children under the age of 18?

4 A. I think it would be wrong for  
5 us to market, promote our products to  
6 people under the legal age to buy the  
7 product, and I think it would be wrong to  
8 do that, and it violates very longstanding  
9 policy and belief that this company's had.

10 Q. And Mr. Schindler, when did  
11 this longstanding belief and policy begin  
12 at R. J. Reynolds Tobacco Company?

13 A. Well, I've been -- I don't know  
14 when it began, but I joined the company in  
15 May of 1974, started two years later,  
16 around April or May of '76, I worked in  
17 the sales organization in the tobacco  
18 company, and it was clearly the policy and  
19 belief of the company at that time.

20 So for a -- you know, twenty-four or  
21 -five or -six year period I've known of  
22 that.

23 Q. So in 1974 did you see a  
24 written policy statement that said that?

25 A. Not that I recall.

26 Q. Was there a policy book that  
27 said: We will not sell or market to  
28 children under the age of 18?

29 A. I don't know, there may have  
30 been. I just don't know.

31 But it was in the sales organization  
32 which, you know, is part of executing many

15194

1 of the marketing ideas, it was very  
2 clearly understood that, you know, it was  
3 against policy to be doing that kind of  
4 stuff.

5 Q. Now, back in 1974, you joined  
6 the company right out of college; correct?

7 A. Out of graduate school, yes.

8 Q. That was your first job out of  
9 graduate school?

10 A. Yes, yes.

11 Q. Okay. You came to the company,  
12 and you were not in a high level  
13 management position at that time; correct?

14           A.     No.    I was in an entry level  
15           position in R. J. Reynolds Industries.  
16

17           Q.     You never worked in research  
and development; correct?

18           A.     Do you mean in my entire  
19           career?

20           Q.     Yes, sir.

21           A.     No.

22           Q.     You never worked in the  
23           marketing department or division; correct?

24           A.     Right.   Never, right.

25           Q.     Never.   You worked in  
26           manufacturing and sales until you assumed  
27           a very high level position; correct?

28           A.     Well, also -- I worked in  
29           manufacturing and sales.

30           I also worked, if you go back to when  
31           I joined the company in the human  
32           resources or personnel group in R. J.

15195

1           Reynolds Industries, that's where I  
2           started as an internal consultant on  
3           organizational issues.

4           And for a period of about seven  
5           years, until I became a plant manager,  
6           that was my role in the company, either in  
7           R. J. Reynolds Industries or as directly a  
8           part of R. J. Reynolds Tobacco Company, I  
9           was engaged in numerous organizational  
10           projects with R&D, marketing, sales,  
11           virtually every function of the company.

12           So I had very indepth involvement on  
13           many issues with those functions.

14           Q.     You circulated copies of  
15           marketing studies and marketing memorandum  
16           as a part of your employment?

17           MR. CRIST:

18           This is at any point in time?

19           Q.     Any point in time?

20           A.     Circulated marketing studies?

21           Q.     Yes, sir.

22           A.     Well, in the current job I'm  
23           in, obviously I've got access to all the  
24           marketing materials.

25           When I was in manufacturing, I  
26           imagine I had some -- you know, lots of  
27           discussions with marketing folks out of  
28           that job, whether as a plant manager or  
29           head of operations.

30           So obviously in sales years ago I had  
31           access to that.   So throughout my career  
32           in those various functions, a lot of

15196

1           involvement with marketing people.

2           Q.     You also, Mr. Schindler, have  
3           seen marketing reports from those periods  
4           of time, the periods of time before you  
5           became president of R. J. Reynolds;  
6           correct?

7           A.     Yes, some.

8           Q.     And you know that today you  
9           don't do tracking of young smokers below  
10           the age of 18; correct?

11 A. That's right.  
12 Q. What is tracking?

13 A. Well, what was -- what you  
14 referred to back like, you know, around  
15 1980 and before, I believe the company  
16 through NFO research, National Family  
17 Opinion Survey, over a period of years in  
18 the process of people and families being  
19 asked which products do you use, they  
20 would identify smokers and their brand  
21 choice.

22 And in that data, they would have  
23 data on if somebody was 15 or 16 that was  
24 smoking, they would be identified as a  
25 16-year-old smoker and what brand they  
26 were smoking. That's what was being  
27 tracked or that was the data which was  
28 being used.

29 Q. Do you track smokers who are  
30 below the age of 18 today?

31 A. No.

32 Q. And that was a decision made by  
15197

2 you as CEO of R. J. Reynolds Tobacco  
Company?

3 A. What, to --

4 Q. To stop tracking.

5 A. No. As far as I know, the NFO  
6 data that would identify smokers under 18,  
7 and -- or identify their age and their  
8 brand choice as near as I can tell stopped  
9 somewhere in 1980 or '81. So that's  
10 almost nineteen years, twenty years ago.

11 Q. So you have never authorized  
12 tracking of below-the-age smokers;  
13 correct?

14 A. Of course not.

15 Q. You think that would be wrong?

16 A. Yes. I don't think we should  
17 for any -- certainly out of marketing be  
18 tracking smokers under the legal age to  
19 buy the product or identifying brand  
20 choices of underage people who smoke.

21 Q. Now, let me ask you to  
22 distinguish. You keep using the term  
23 legal age. I'm asking about smokers below  
24 the age of 18. Does that make a  
25 difference to you whether the age is legal  
26 or not?

27 A. Well, the -- in most states  
28 except a couple, the legal age to buy the  
29 product is 18. I'm not sure I  
30 understand --

31 Q. If it were not illegal to sell  
32 your product to people below the age of  
15198

1 18, would it still be a violation of the  
2 duty of your company to the general public  
3 to be promoting the sale to people below  
4 the age of 18?

5 A. Would it be wrong to sell a  
6 product if the law said you could sell it  
7 to somebody who was 15?

8 Well, I mean, I don't know how to  
9 answer that. I do not believe people, you  
10 know, 14-, 15-year-olds should smoke.

11 Because the product has, you know,  
12 significant risk to it, that when you  
13 start smoking on a regular basis, it is  
14 difficult or can be difficult to quit, and  
15 people at that age aren't, to me, in  
16 a state of mind or maturity to make that  
17 kind of judgment.

18 So I don't think those people that --  
19 those young people should be using the  
20 product, whether it was, in my view,  
21 whether it was legal or not. I think  
22 it's -- but I'm not capable of making a  
23 legal judgment here.

24 Q. Is it your opinion that people  
25 below the age of 18 are incapable of  
26 making an informed and rational decision  
27 on whether to smoke or not smoke, sir?

28 A. Yes, I think under 18 you -- I  
29 guess -- you could get on a sliding scale  
30 from 17 and a half to wherever, but  
31 certainly a 12-, 14-year-old.

32 So I generally say, yes, below 18,  
15199

1 people are not in a position to make an  
2 informed decision about the use of this  
3 product given its long-term health risks  
4 and consequences and, therefore, I don't  
5 think they should be smoking or marketed  
6 this product.

7 Q. In fact, sir, you had teenage  
8 children; correct?

9 A. Yes.

10 Q. And they are not teenagers  
11 anymore; correct?

12 A. No, they are not.

13 Q. In fact, you caught your  
14 daughter smoking at one time; correct?

15 A. Yes.

16 Q. And you sat them down and  
17 advised them that they shouldn't smoke;  
18 correct?

19 A. Yes.

20 Q. And they were below the age of  
21 18 at that time; correct?

22 A. Yes.

23 Q. Mr. Schindler, do you  
24 understand that the CEO of Liggett & Myers  
25 has admitted that cigarette smoking is  
26 addictive?

27 A. Yes, I believe I know that.

28 Q. Do you also know that the CEO  
29 of Liggett & Myers has admitted that  
30 cigarette smoking causes lung cancer?

31 A. Yes, sir.

32 Q. Do you know that the CEO of  
15200  
1 Liggett & Myers has admitted that  
2 cigarette smoking causes other diseases  
3 such as coronary heart disease, chronic  
4 obstructive pulmonary disease?

5 A. I think so.

6 Q. Do you understand that the CEO,  
7 the head man at Lorillard Tobacco Company,  
8 has admitted that cigarette smoking is  
9 addictive?

10 A. Yes.

11 Q. And do you understand that the  
12 CEO of Lorillard Tobacco Company has also  
13 admitted that cigarette smoking causes  
14 lung cancer and other diseases?

15 A. Yes.

16 Q. Do you understand that the CEO  
17 at Philip Morris has admitted that  
18 cigarette smoking is addictive?

19 A. Yes.

20 Q. And do you understand that the  
21 CEO at Philip Morris has admitted that  
22 cigarette smoking causes lung cancer and  
23 other diseases?

24 A. I'm not aware of that testimony  
25 by the CEO at Philip Morris.

26 Q. Now, you agree, do you not,  
27 sir, that cigarette smoking significantly  
28 increases the risk of lung cancer?

29 A. Yes.

30 Q. Do you agree that cigarette  
31 smoking significantly increases the risk  
32 of a person contracting coronary artery

15201

1 disease?

2 A. Yes.

3 Q. Do you agree, sir, that  
4 cigarette smoking significantly increases  
5 the risk of chronic obstructive pulmonary  
6 disease?

7 A. Yes.

8 Q. And do you agree that cigarette  
9 smoking significantly increases the risk  
10 of contracting bladder cancer?

11 A. I'm not as familiar with  
12 bladder cancer, but, you know, I would  
13 assume that's correct.

14 Q. You don't disagree with that  
15 statement, do you?

16 A. No, I --

17 Q. Do you agree that your company  
18 has a duty to the public to inform them of  
19 the risk associated with the use and  
20 smoking of your product?

21 A. I believe this product has  
22 significant health risks. I believe that  
23 we have -- the people who use this product  
24 should be informed and aware of those  
25 risks, and I believe that they are.

26 I mean, there have been warning  
27 labels on the packs for over thirty years,  
28 and I think -- I think the public is  
29 informed quite comprehensively on the risk  
30 of this product.

31 Q. Do you agree that your company  
32 has a duty to provide to the public and

15202

1 particularly the medical community

2 information that your company has  
3 regarding its dangerous and hazardous  
4 properties?

5 A. Well, I am -- the term duty to  
6 me, I'm not a lawyer, but it sounds like a  
7 legal term.

8 So I think in the way we operate this  
9 business, that if we, you know, know  
10 something about the product that the  
11 public health community doesn't know, we  
12 would publish that information and make  
13 them aware of it.

14 Q. And that's what you do now;  
15 correct?

16 A. Yes. I mean, we publish -- our  
17 R&D people publish quite aggressively on  
18 the research that they conduct, and I  
19 believe that the company, it's my  
20 understanding, has been that way for years  
21 and years and years.

22 Q. Would you agree that your  
23 policy of open disclosure of information  
24 regarding the nature of your product has  
25 changed since the filing of this lawsuit  
26 and other lawsuits, including those by the  
27 attorneys general of some 46 states in the  
28 United States?

29 A. I don't -- I don't think so.  
30 It's my understanding that the company has  
31 been very open about its research and  
32 aggressively has published over many, many

15203

1 decades.

2 And so I don't see us publishing more  
3 because of this lawsuit or the MSA in  
4 terms of, you know, R&D types of efforts.  
5 I don't see any change there.

6 Q. Yes. Are you familiar with the  
7 Advertising Code of 1964 entered into by  
8 all the tobacco companies?

9 A. Not -- not in -- and you are  
10 saying 1964. I can't say in some literal  
11 sense. I'm generally aware of it, yes.

12 Q. I mean, you will agree that  
13 there have been agreements amongst the  
14 tobacco companies to an advertising  
15 code --

16 A. Yes.

17 Q. -- at one time or another;  
18 correct?

19 A. Yes.

20 Q. Do you know generally that the  
21 advertising code that your industry  
22 entered into provided that you would not  
23 advertise in magazines that marketed below  
24 the age of 21? Do you know that?

25 A. That is the first time I've  
26 ever heard anybody ever say that.

27 Q. You were in the military, sir,  
28 weren't you?

29 A. Yes.

30 Q. You know that during World War  
31 II, tobacco companies gave free cigarettes

to soldiers?

15204

1 A. Well, I guess I know that from  
2 reading about it. I was not in World War  
3 II. I was in Vietnam.

4 Q. Uh-huh. And you know as a  
5 former member of the military that -- were  
6 cigarettes given to you free when you were  
7 in the military?

8 A. In the C-rations that we got,  
9 yeah, I believe there was always a little  
10 four-pack in there.

11 Q. So you didn't have to buy those  
12 cigarettes. To some degree, they were  
13 cigarettes given to you through the United  
14 States government; right?

15 A. Well, when you are up along the  
16 Cambodian border in the middle of the  
17 jungle, they would come in C-rations.  
18 There weren't any convenience stores you  
19 could stop in and buy them from.

20 Q. Let me show you a document  
21 marked Scott Exhibit 4950, which is an  
22 advertisement that, if you look up in the  
23 right-hand corner, appears to be dated  
24 1984; correct?

25 A. Yes.

26 Q. Would you read the title of  
27 that document?

28 A. Can We Have an Open Debate  
29 About Smoking?

30 Q. And this is an R. J. Reynolds  
31 Tobacco Company ad; correct?

32 A. Yes.

15205

1 Q. You've seen that document, that  
2 ad before; correct?

3 A. Yes, uh-huh.

4 Q. Would you read the third  
5 paragraph?

6 A. Is that "Over the years"?

7 Q. Yes.

8 A. Over the years, you've heard so  
9 many negative reports about smoking and  
10 health and so little to challenge these  
11 reports that you may assume the case  
12 against smoking is closed.

13 Q. And then read the next sentence  
14 and -- the next two.

15 A. But this is far from the  
16 truth.

17 Studies which conclude that smoking  
18 causes disease have regularly ignored  
19 significant evidence to the contrary.  
20 These scientific findings come from  
21 research completely independent of the  
22 tobacco industry.

23 Q. And are you aware in 1984 of  
24 any significant scientific evidence that  
25 suggested that smoking did not cause lung  
26 cancer or any other serious diseases?

27 A. I personally was not aware of  
28 any, or am not aware of any.

29           Q.    Would you agree that the  
30           strategy of the industry in connection  
31           with smoking-related health issues had  
32           been to deny that cigarettes caused

15206

1           problems?

2           A.    You are talking about back in  
3           the '50s and the '60s?  Is that --

4           Q.    Yes, sir.

5           A.    I don't know what the strategy  
6           is, was.  By looking at a couple documents  
7           here, it's hard for me to articulate what  
8           the strategy of the company was thirty,  
9           forty, fifty years ago when I had nothing  
10           to do with it and didn't know these  
11           people.

12           I mean, it's hard for me to say,  
13           yeah, that was their strategy.  I don't  
14           know how to answer that.  I wasn't there.

15           Q.    Would you agree, sir, that  
16           through the '70s, the '80s and even up to  
17           1990 when you were with R. J. Reynolds  
18           Tobacco Company, the company publicly  
19           continued to deny the scientific evidence  
20           which showed that cigarette smoking  
21           significantly increased the risk of  
22           disease or caused serious disease?

23           A.    You know, I'm not sure that's  
24           true at all, that you are saying the  
25           company publicly denied the risk of  
26           smoking.

27           (The video presentation is  
28           interrupted.)

29           MS. DeSUE:

30           Your Honor, this would be a good time  
31           to stop the video for the morning recess,  
32           if that would be all right?

15207

1           THE COURT:

2           Fine.  We will recess for fifteen  
3           minutes by the wall clock.

4           (In open court without a jury  
5           present:)

6           THE COURT:

7           The jury has left the courtroom.  I  
8           will give plaintiffs an opportunity to  
9           place anything of record they wish as  
10           result of the morning's proceedings.

11           Anything for the record, plaintiffs  
12           counsel?

13           MR. LEGER:

14           No, Your Honor.

15           THE COURT:

16           Defense?

17           MR. WITTMANN:

18           No, Your Honor.

19           THE COURT:

20           An issue was brought up at the  
21           sidebar with regard to one of the  
22           documents -- in particular, the Document  
23           3535, but I'm not sure of that -- as to  
24           whether a paragraph citing dollars of  
25           total expenditures on advertising versus

26 dollars of total expenditures on research  
27 could be read to the jury. And I made  
28 some comments during that sidebar.

29 If the issue is going to come up  
30 again -- and I'm confident it will -- I  
31 would like both sides to brief the issue  
32 for me.

15208

1 I'm told by defendants that there is  
2 an agreement in this case that no evidence  
3 of dollar amounts would be brought up.  
4 That is I believe denied by plaintiffs  
5 side.

6 I will conduct a hearing on whether  
7 or not evidence of that sort is  
8 admissible, and I would like both sides to  
9 brief the issue for me.

10 And if there are citations in  
11 testimony or rulings by the Court that are  
12 relevant, I would like them to be brought  
13 to my attention.

14 And after the Mardi Gras recess in  
15 the case, we will set a hearing on it so  
16 that I can study the issues and get the  
17 benefit of your briefing on it, and then I  
18 will make a ruling.

19 MR. RUSS HERMAN:

20 Your Honor, for the record, we  
21 categorically deny there has been any such  
22 agreement, number one.

23 Number two, we submitted two briefs  
24 on the issue by letter. We will put them  
25 together in another formal brief.

26 We cited the Court to Your Honor's  
27 prior rulings on this issue.

28 THE COURT:

29 I have read those letters.

30 MR. RUSS HERMAN:

31 We will put it all in brief form,  
32 including the testimony that has been

15209

1 elicited in by defense counsel to various  
2 witnesses. We will be prepared to argue  
3 that on the first day back.

4 THE COURT:

5 The other issue I want to question  
6 Mr. Louis Gertler and Mr. Williams about  
7 is what, if any, progress is made on the  
8 Fisher deposition objections? Has there  
9 been any significant reduction on what I  
10 need to rule on?

11 MR. LOUIS GERTLER:

12 Your Honor, my father was reviewing  
13 that during the video, and he stepped out  
14 I guess to go to the men's room.

15 MR. WILLIAMS:

16 I chatted with him briefly when there  
17 was a sidebar.

18 MR. LOUIS GERTLER:

19 Okay.

20 MR. WILLIAMS:

21 And we need to have a brief chat.  
22 But I think there is some progress being

23 made.

24 THE COURT:

25 Fine. Then I will check with you  
26 later on it.

27 MR. WILLIAMS:

28 Thank you, Your Honor.

29 THE COURT:

30 Anything else?

31 We will recess until about five  
32 minutes of the hour.

15210

1 (A recess is taken at 10:44 a.m.)

2 - - - -

3 (In open court with a jury present at  
4 11:02 a.m.:)

5 THE COURT:

6 Please be seated. Mr. Gertler and  
7 Mr. Williams, please?

8 (At sidebar:)

9 MR. MICHAEL GERTLER:

10 We have succeeded in cutting down the  
11 problems with the deposition, Judge. It's  
12 now about a 15- to 17- or 18-minute  
13 deposition.

14 We still have objections.

15 THE COURT:

16 What I'm interested in is can I  
17 reasonably get that done at the lunch  
18 break and still leave you all time to get  
19 a bite.

20 MR. WILLIAMS:

21 I think you should be able to. It  
22 may take close to an hour.

23 I think that our objections will be a  
24 lot narrower than they were in the prior  
25 hearing. So I think we should be okay.

26 THE COURT:

27 Okay. Let's make sure with Dominic  
28 Gianna that his people have all that  
29 material here. I think they brought it  
30 yesterday.

31 MR. MICHAEL GERTLER:

32 They have.

15211

1 THE COURT:

2 We will do it in the courtroom at the  
3 lunch recess.

4 (In open court:)

5 THE COURT:

6 Are we ready to continue with the  
7 video, counsel?

8 MR. LEGER:

9 We are ready to proceed, Your Honor.

10 (The video presentation resumes:)

11 Q. I'm going to show you an  
12 exhibit marked Scott's Plaintiffs' Exhibit  
13 No. 4720 dated December 29, 1988, sir.

14 That appears to be on RJR stationery;  
15 correct?

16 A. Yes.

17 Q. It's from a Ms. Jo F. Spach?

18 A. Spach.

19 Q. Do you know Ms. Spach?

20                   A. Yes, I do.  
21                   Q. She was the manager of public  
22 information at the public relations  
23 department in 1988; correct?  
24                   A. Yes.  
25                   Q. What's she do today?  
26                   A. She's retired.  
27                   Q. When did she retire?  
28                   A. I'm not sure. It could have  
29 been four or five years ago or -- I'm just  
30 not sure.  
31                   Q. So in the 1990s; correct?  
32                   A. Yes, as far as -- yes.

15212

1                   Q. No disciplinary actions or  
2 reprimands were --

3                   A. No.  
4                   Q. -- taken against her?  
5                   A. No.  
6                   Q. This is a letter from  
7 Ms. Spach; correct?  
8                   A. Yes.  
9                   Q. To a Ms. Elaine Olson?  
10                   A. Yes.  
11                   Q. Would you read the first  
12 paragraph of that letter?

13                   A. Thank you for your letter  
14 concerning our Camel 75th Birthday ad  
15 campaign. Opinions of our marketing  
16 efforts are always welcomed, and we  
17 appreciate your taking the time to express  
18 your thoughts. It is helpful to get  
19 honest reactions from the public in order  
20 that we may better evaluate our efforts  
21 and be guided in the future.

22                   Q. Would you read the third  
23 paragraph that begins "Despite"?  
24                   A. Despite all the research going  
25 on, the simple and unfortunate fact is  
26 that scientists do not know the cause or  
27 causes of the chronic diseases reported to  
28 be associated with smoking.

29                   The answers to the many unanswered  
30 controversies surrounding smoking and the  
31 fundamental causes of diseases often  
32 statistically associated with smoking we

15213

1 believe can only be determined through  
2 more scientific research.

3                   Our company intends, therefore, to  
4 continue to support such research in a  
5 continuing search for answers.

6                   Q. Now, suggesting that the  
7 position of your company, the manager of  
8 public information took the position that  
9 the controversy was still open; correct?

10                   A. It says -- talking in a sort of  
11 scientific way, this language about  
12 specific causality, I don't -- this  
13 doesn't say to me there's some public  
14 denial here of the risk associated with  
15 smoking. It's talking about cause or  
16 causation.

17 Q. Ms. Spach is not a scientist or  
18 a medical doctor, is she?

19 A. No, she's not.

20 Q. She was a public relations  
21 director; correct?

22 A. Yes.

23 Q. And she denied the unfortunate  
24 fact that scientists do not know the cause  
25 or causes of chronic diseases reported to  
26 be associated with smoking?

27 A. Yes, that's what it says.

28 Q. Let me show you a document  
29 dated January 11, 1990.

30 I presented to you, Mr. Schindler, a  
31 document which has a number on it at the  
32 bottom 2599, appears to be a letter dated

15214

1 June 11, 1990.

2 There's also an exhibit tag dated  
3 apparently 4-1997 calling it Exhibit  
4 No. 12, apparently a letter on RJR  
5 stationery. Do you see that, sir?

6 A. Yes.

7 Q. Okay, sir. I'm going to ask  
8 you to look at the actual copy of the  
9 Document 2599, and I'm going to ask you to  
10 read the -- first read who it's to.

11 A. It's to the principal of Willow  
12 Ridge School, 480 Willow Ridge Drive,  
13 Amherst, New York.

14 Q. Does this appear to be a copy  
15 of a letter on RJR stationery?

16 A. Yes.

17 Q. And would you please read the  
18 first paragraph?

19 A. A number of your fifth grade  
20 students have written R. J. Reynolds  
21 Tobacco Company commenting that they do  
22 not feel our company should allow the use  
23 of our brand names on children's toys and  
24 candy cigarettes.

25 Q. Now, sir, would you go down to  
26 the fourth paragraph? I'd like you to  
27 read the further paragraph, please, sir.

28 A. The tobacco industry is also  
29 concerned about the charges being made  
30 that smoking is responsible for so many  
31 serious diseases. Long before the present  
32 criticism began, the tobacco industry --

15215

1 see, it's cut off here.

2 Q. You can stop there, sir.

3 Now, please read the next paragraph.

4 A. Despite all the research going  
5 on, the simple and unfortunate fact is  
6 that scientists do not know the cause or  
7 causes of the chronic diseases reported to  
8 be associated with smoking.

9 Q. Now, sir, I'm going to ask you  
10 to look at the previous exhibit, No. 4720,  
11 dated December 29, and ask you to read the  
12 paragraph there, please?

13 A. Okay. Despite --

14 Q. Or at least read that sentence,  
15 if you would?

16 A. Despite all the research going  
17 on, the simple and unfortunate fact is  
18 that scientists do not know the cause or  
19 causes of the chronic diseases reported to  
20 be associated with smoking.

21 Q. Now, I'm going to ask you to  
22 look at the paragraph that you -- the  
23 sentence that you just read, and then look  
24 again at the sentence you read in January  
25 11, 1990, and tell me if they are  
26 identical or not, please?

27 A. No, they are -- they are the  
28 same.

29 Q. Does it appear to be a form  
30 letter, sir, or at least form paragraphs?

31 A. Yeah, I -- I think so, yes.

32 Q. Now, tell me about the Eclipse  
15216

1 cigarette, if you would. What is Eclipse?

2 A. Well, Eclipse is a newer  
3 generation, if you will, of the Premier  
4 product that has a heat source at the end  
5 that you light, a carbon heat source like  
6 Premier had.

7 The construction of the blend in the  
8 rod is significantly different than the  
9 design of Premier. It primarily heats  
10 tobacco, although it does burn a small  
11 amount at the end of the rod that's up  
12 against the heat source, you know.

13 And it has substantial reductions of  
14 secondhand smoke and -- and other  
15 compounds that we talked about with  
16 Premier that are associated with risk of  
17 smoking.

18 Q. The Eclipse cigarette --

19 A. Tastes better too.

20 Q. I'm sorry. You smoke Eclipse,  
21 don't you?

22 A. Yes.

23 Q. Is that the only brand of  
24 cigarettes that you smoke now?

25 A. It's the primary one I smoke.  
26 I'll over time smoke virtually all of ours  
27 at one -- and some competitors'. But it's  
28 primarily Eclipse is what I smoke.

29 Q. And you started smoking again  
30 when you became a high level executive  
31 with R. J. Reynolds; correct?

32 MR. CRIST:

15217

1 I'm sorry?

2 Q. You started smoking again once  
3 you became a high level executive with  
4 R. J. Reynolds; correct?

5 A. Well, all I -- you know, I  
6 smoked, and when I was in Vietnam, I  
7 stopped in Vietnam.

8 I started again sometime when I  
9 joined the company. I stopped I believe  
10 when I was a plant manager, and then I

11 came back.

12 I worked at Nabisco for a couple  
13 years, and I came back in that same  
14 October period, Premier and the take-over,  
15 I rejoined. And somewhere after I  
16 rejoined as the VP of personnel, I started  
17 smoking again.

18 Q. Now, Eclipse continues,  
19 however, to deliver nicotine; correct?

20 A. Yes.

21 Q. In any event, R. J. Reynolds  
22 has never attempted to market a cigarette  
23 which does not deliver nicotine; is that  
24 correct?

25 A. Not to my knowledge.

26 Q. The Eclipse cigarette delivers  
27 nicotine, but it attempts to reduce the  
28 amount of carcinogens delivered to the  
29 smoker; correct?

30 A. Well, it reduces the amount of  
31 smoke. It's primarily heating rather than  
32 burning, as we discussed before, and in

15218

1 that process there are substantial  
2 reductions in tar and other gaseous  
3 compounds that are in cigarettes. But it  
4 still delivers taste and nicotine as part  
5 of that delivery system.

6 Q. Is the Eclipse cigarette a safe  
7 cigarette?

8 A. No. I don't think there is any  
9 such thing as a safe cigarette.

10 Q. Was the Premier cigarette a  
11 safe cigarette?

12 A. I would not define it that  
13 way. I don't think anybody here would.

14 Q. Is the Eclipse cigarette a  
15 safer cigarette?

16 A. I refer to it -- we refer to it  
17 as reduced risk, which is the way I prefer  
18 to describe it.

19 I don't like the -- certainly not the  
20 term safe cigarette, and I really don't  
21 like the term safer cigarette because --  
22 although some people have used that  
23 outside the company, because it implies  
24 safe, and I think that's a misnomer and  
25 misleading.

26 And so I prefer it -- we believe it,  
27 you know, reduces risk. That's the way we  
28 describe the product.

29 I don't like safe or safer. I think  
30 it's a potential misnomer.

31 Q. In fact, safe or safer connotes  
32 that other cigarettes are not safe;

15219

1 correct?

2 A. Well, if you said something  
3 that has less risk or is safer than --  
4 than a burned-down cigarette, that  
5 obviously says that the burned-down  
6 cigarette is riskier.

7 Q. Now, sir, I want to refer you

8 to a subject we haven't talked about yet.  
9 Did RJR do animal studies, mouse studies  
10 at some time during the '60s and '70s?  
11 A. I've heard that the company  
12 did, but that's -- you know, that's all I  
13 know about it.

14 Q. Was there a thing referred to  
15 as the mouse house?

16 A. I believe so.

17 Q. And you've referred to that?

18 A. Well, I've heard the term, I  
19 mean, but I was -- as you are well aware,  
20 depending on where you are in the '60s,  
21 either in college or in Vietnam, so not  
22 with the company.

23 Q. Okay. But now we have  
24 obviously heard people in the company  
25 refer to the mouse house; correct?

26 A. Yeah. I mean, in the course  
27 of, you know, preparing for cases and  
28 depositions and so forth, yes.

29 Q. So you know that there was a  
30 point in time when R. J. Reynolds Tobacco  
31 Company research and development personnel  
32 actually had a building in which they were

15220

1 doing the studies regarding the effects of  
2 cigarette smoking on animals; correct?

3 A. I don't know what they were  
4 doing in that building. I have absolutely  
5 no firsthand knowledge of that.

6 Q. I want to show you an exhibit  
7 which has been -- at this time I'm going  
8 to show you a different exhibit.

9 I'm going to show you an exhibit,  
10 sir, that has been marked as Scott's  
11 Plaintiffs' Exhibit No. 3269.

12 MR. CRIST:

13 Can I see what the front page looks  
14 like? Okay.

15 Q. And it's dated October 3rd,  
16 1969. If you look at the left, it says  
17 Confidential; correct?

18 A. Yes.

19 Q. Appears to be a Philip Morris  
20 interoffice correspondence; correct?

21 A. That's what it says at the top.

22 Q. You have seen this document  
23 before in testimony in --

24 A. I think so.

25 Q. It's to Mr. -- or Dr. H.  
26 Wakeham, correct, from R. D. Carpenter?

27 A. Yes.

28 Q. And do you know a Dr. Nielson  
29 at R. J. Reynolds Tobacco Company?

30 A. No.

31 Q. The document dated October 3rd,  
32 1969, suggests Dr. Nielson showed R. J.

15221

1 Reynolds' biological facilities to  
2 Dr. Arthur Burke of American Brands and to  
3 me on Wednesday, October 1st; correct?

4 A. That's what it says.

5 Q. It appears in the document that  
6 R. J. Reynolds was showing their  
7 biological facilities to scientists from  
8 both American Brands and Philip Morris;  
9 correct?

10 A. I guess so, yeah.

11 Q. It suggests that there was a  
12 four thousand square foot building, and  
13 that the building housed rabbits and rats;  
14 correct?

15 A. Yes.

16 Q. And even there appeared to be a  
17 location for dealing with primates;  
18 correct, sir?

19 A. Where are you on the list?

20 Q. Down in the third paragraph at  
21 the end.

22 A. Oh --

23 Q. It was obvious that there would  
24 be primates?

25 A. Oh, yeah. Okay, I see that.

26 Q. Is that unusual for a scientist  
27 from Philip Morris and R. J. Reynolds to  
28 be showing their research facilities  
29 amongst each other in today's environment?

30 A. Well, we haven't had any visits  
31 from them lately, but, you know, we  
32 visited their -- you know, our folks will

15222

1 go into their manufacturing facilities.

2 That's been done.

3 Q. You are intense competitors;  
4 correct?

5 A. Yep.

6 Q. It would be very rare and  
7 probably require your approval as chairman  
8 and CEO to allow research and development  
9 scientists from Philip Morris to visit  
10 your research and development facilities;  
11 correct?

12 A. Yeah, if it were done today, I  
13 think Dr. Townsend would call me and let  
14 me know what's up. I mean, it's possible  
15 that you could have a reason to get  
16 together, any number of issues.

17 Q. Go to page two, sir. Would you  
18 please read that first sentence?

19 A. Reynolds has developed an  
20 inhalation smoking machine, which we also  
21 saw.

22 Q. And it further states the  
23 machine has obviously been in use for some  
24 time and is being used to expose rats to  
25 cigarette smoke; correct?

26 A. Yes.

27 Q. And in the same paragraph, the  
28 operator said he has no trouble getting  
29 the smoking rats into the body tubes for  
30 exposure, but he has a lot of trouble with  
31 the sham exposed group; correct?

32 A. That's what it says.

15223

1 Q. The conclusion was -- read the

2 next sentence, period?

3 A. This indicates that the rats  
4 have become habituated to the smoke.

5 Q. Do you understand, sir, that in  
6 the definition of addiction that the  
7 Surgeon General has given, one of the  
8 elements of addiction is that the drug  
9 nicotine has a pharmacological effect on  
10 the human body?

11 A. Yes.

12 Q. And you previously read it,  
13 that that pharmacological effect is  
14 similar to the effect of heroin and  
15 cocaine; correct?

16 A. I don't remember reading the  
17 pharmacological effect is similar to  
18 heroin and cocaine. I don't remember  
19 seeing the word pharmacological effect in  
20 that summary you were showing me that had  
21 those three points earlier on.

22 I remember the -- sort of remember  
23 the three points of similar to heroin and  
24 cocaine. I don't remember pharmacological  
25 effect being associated with that.

26 Q. Let's go back and take a look  
27 at that real quickly.

28 I'm going to show you, referring to  
29 Scott Exhibit No. 4279, which is the 1988  
30 report of the Surgeon General, it's health  
31 consequences of smoking, nicotine  
32 addiction, and I'll refer you to page

15224

1 nine, sir, and ask you to read number  
2 three?

3 A. Well, yeah, it's there. I  
4 forgot. The --

5 Q. Please read that again, sir.

6 A. Pharmacologic and behavioral  
7 processes that determine tobacco -- yeah,  
8 the pharmacology and behavioral processes  
9 that determine tobacco addiction are  
10 similar to those that determine -- are  
11 similar to those that determine addiction  
12 to drugs such as heroin and cocaine.

13 Q. Now, sir, I'm going to show you  
14 an exhibit marked Scott Exhibit 4524.

15 And that is on RJR stationery;  
16 correct, sir?

17 A. Yes.

18 Q. Or at least indicating  
19 interoffice memorandum?

20 A. Yes, yes.

21 Q. This is a memorandum from  
22 Dr. Alan Rodgman of R. J. Reynolds Tobacco  
23 Company and Dr. Chin K. Lee; correct?

24 A. Yes.

25 Q. Do you know Dr. Lee?

26 A. No, I don't.

27 Q. Would you please read the first  
28 paragraph?

29 A. I discussed with Mr. Max Crohn  
30 in legal your September 20 memo on our  
31 Ames testing program. Your proposal and

32 the specific advantages of investigating  
15225  
1 tobacco smoke condensate fractions  
2 including denicotinized smoke --  
3 Q. Denicotinized.  
4 A. -- denicotinized smoke  
5 condensate.  
6 Q. Now, Mr. Schindler, is  
7 denicotinized smoke condensate smoke  
8 condensate from which the nicotine has  
9 been removed; correct?  
10 A. I would assume so.  
11 Q. The process of denicotinization  
12 is not an unknown process to you --  
13 A. No.  
14 Q. -- at R. J. Reynolds; correct?  
15 A. Right.  
16 Q. That's a process of  
17 manufacturing, of removing the nicotine  
18 from certain types of tobaccos; correct?  
19 A. It's a process that, yes, can  
20 do that.  
21 Q. And you can remove the  
22 nicotine, take it out, and you can put it  
23 back in at the levels that you want to;  
24 correct?  
25 A. We don't do that.  
26 Q. But you -- that can be done;  
27 correct?  
28 A. We don't do that.  
29 Q. Can it be done, sir?  
30 A. Could it be done --  
31 Q. Technologically?  
32 A. -- if you wanted to?  
15226  
1 Q. Can you do it?  
2 A. Today?  
3 Q. Yes, sir.  
4 A. No, it's not of sufficient  
5 scale.  
6 The point here is we don't do that.  
7 We have never done that in our cigarettes  
8 that are being sold in the marketplace out  
9 there.  
10 Q. But it can technologically be  
11 done?  
12 A. Sure. If somebody wanted to  
13 take nicotine out and reapply it elsewhere  
14 in the process, you could do that.  
15 Q. Is there also a process by  
16 which nicotine is applied to sheets?  
17 A. It's -- you are talking about  
18 reconstituted sheet --  
19 Q. Yes, sir.  
20 A. -- where you take materials  
21 that -- I need to explain the  
22 reconstituted sheet process -- that can't  
23 normally make it through the production  
24 process.  
25 It's a process that was created I  
26 believe by Reynolds back in the --  
27 probably the late '40s. It's a paper  
28 process.

You take these materials, stems, small particles of tobacco and so forth and you -- you turn it into a paper sheet. You extract the water solubles out

of that so that you have this pulp that is formed into a sheet.

You then take what you extracted from that material and reapply it onto the material it came from originally to form the sheet.

And in that process typically you have less nicotine at the end in those materials that you had at the beginning when they entered that process.

Q. So what you have done at the beginning of the process is removed nicotine from the tobacco materials; correct?

A. Removed all the water solubles, of which nicotine is part of that, obviously.

Q. And then you replace nicotine and other materials back into the sheets --

A. You replace.

Q. -- correct?

A. -- it back, yeah. That extract, as it's called, back on the sheet.

It would be like extracting water solubles. Assume this is all jumbled up in little pieces and you extracted from that anything of a water soluble nature.

Q. Right.

A. And you then ran this pulp through a process that flattened it into a

15228

sheet, and then you sprayed the -- the extract, we call it, or the water soluble that came out of this back onto it, on your sheet, so then you can use it as -- in part of your tobacco work.

Q. So you can remove the nicotine --

A. Sure.

Q. -- from tobacco?

A. Yeah.

Q. And that's denicotinization; correct?

A. Well, I don't know that the reconstituted sheet process anybody ever referred to as denicotinization.

Q. Would you read the next paragraph?

A. Talking about refusal, this --

Q. Mr. Crohn remains adamant that investigation of the mutagenicity of tobacco smoke condensate fractions is unwise from a legal point of view.

Is that what it says, sir?

A. That's what it says.

Q. To conduct such experiments

26 will compromise the philosophy of our  
27 defense against claims raised in the  
28 smoking health issue; correct?  
29

30 A. Yes.  
31

32 Q. Would you read the next  
paragraph?

33 A. This refusal and the reasons  
15229

1 for it parallel previous ones by legal to  
2 permit study of smoke condensate fractions  
3 in mouse skin painting experiments. In  
4 fact, legal has been and is even unwilling  
5 to permit denicotinization of the whole  
6 smoke condensate prior to study of its  
7 effects in mouse skin painting on  
8 mutagenicity studies.

9 Q. Do you know what mutagenicity  
10 is?

11 A. Just very generally.

12 Q. And then it concludes: In  
13 accordance with legal's wishes and  
14 reasons, permission to examine the  
15 mutagenicity of smoke condensate fractions  
16 and denicotinized tobacco smoke condensate  
17 is refused; correct, sir?

18 A. That's what this says.

19 Q. What is the lowest level of  
20 nicotine that's put in R. J. Reynolds  
21 Tobacco Company's cigarettes at this time?

22 A. First of all, we don't put  
23 nicotine into the cigarettes.

24 The lowest amount of nicotine I guess  
25 is about .1, or a tenth of a milligram.

26 Q. You can regulate the amount of  
27 nicotine in a cigarette technologically,  
28 can't you?

29 A. We don't regulate the level of  
30 nicotine in a cigarette.

31 Q. Are there no low nicotine  
32 cigarettes marketed by R. J. Reynolds  
15230

1 Tobacco Company at this time?

2 A. There is a range of nicotine  
3 depending on what brand, whether it's full  
4 flavor, lights, ultralights or very  
5 ultralight, and the nicotine level tends  
6 to follow the tar level of a cigarette.

7 So an ultralow tar cigarette will  
8 have less nicotine than lights or full  
9 flavor and so forth.

10 Q. So you manufacture your brands  
11 such as Winston, Salem, vantage, Camel --

12 A. Yes.

13 Q. -- and Doral; correct?

14 A. Yes, and other brands too.

15 Q. And among each one of those  
16 brands, there is a regular brand, there is  
17 a light brand and an ultralight brand; is  
18 that correct?

19 A. So full flavor you are calling  
20 regular. We would call it full flavor,  
21 lights, ultralights.

22 Q. Now, as opposed to the full

23 flavor, the light or the ultralight has a  
24 lower level of tar and nicotine; correct?

25 A. Yes.

26 Q. You have different brands of  
27 cigarettes that have different levels of  
28 nicotine in them; correct?

29 A. Different levels of tar and, as  
30 a consequence, we will have a different  
31 level of nicotine related to the tar level  
32 of this particular cigarette.

15231

1 Q. So your answer is yes; correct?

2 A. Yes.

3 Q. All right. Is it your  
4 testimony here under oath that you have  
5 not seen documents suggesting that R. J.  
6 Reynolds Tobacco Company personnel were  
7 studying the smoking patterns of teenage  
8 smokers, sir?

9 A. I have previously testified to  
10 my knowledge that the company for a period  
11 in the '50s up until somewhere around 1980  
12 had collected data on brand choices of  
13 smokers, which included the brand choices  
14 of underage smokers. I do not view that  
15 as a marketing study.

16 Q. What do you view that as, sir?

17 A. I view it as a collection of  
18 data and not a marketing study.

19 Q. And why would a tobacco company  
20 which sells cigarettes collect data on  
21 teenage smokers and child smokers?

22 A. They collected the data. You  
23 will have to ask them why that were  
24 collecting it.

25 Q. You think if they collected  
26 that data in the hopes of selling their  
27 cigarettes to teenagers that that's wrong;  
28 right?

29 A. I've testified I believe here  
30 and certainly in other cases, I know in  
31 the Minnesota trial, that they -- in my  
32 view, it was wrong to collect that data.

15232

1 But that to me is not a marketing  
2 study. In fact, I have never heard  
3 anybody point to that data as a marketing  
4 study.

5 Q. Well, sir, what would be wrong  
6 about collecting the data unless you are  
7 going to use the data in an attempt to  
8 market and sell your cigarettes?

9 A. What would be wrong about  
10 collecting the data?

11 Q. Yes, sir.

12 A. The policy of this company now  
13 and back then was to not market to  
14 underage people who smoked.

15 In my view, it was wrong to collect  
16 that data because of that policy. If you  
17 have that as a policy, I don't think it's  
18 real smart to be collecting data on  
19 segments of the market that you will not

20 market to, should not market to.

21 So that's my personal view. I don't  
22 think the data should have been  
23 collected. We don't collect it today. In  
24 my opinion, they shouldn't have collected  
25 it then.

26 But that is not a marketing study,  
27 and I have never heard anyone in any of  
28 this ever portray that as a marketing  
29 study.

30 Q. You are aware of and you've  
31 testified previously of hearing the  
32 testimony of Mr. Goldstone, who was the

15233

1 chairman of the board of R. J. Nabisco,  
2 R. J. Nabisco when he testified in 1998  
3 before the United States Congress that he  
4 considered the documents regarding  
5 tracking of underage smokers to be immoral  
6 and unethical; correct?

7 A. You'll have to show me the  
8 testimony for me to comment on it or  
9 remember it. I mean, you just have to --  
10 I --

11 Q. When you collect data today on  
12 smoking patterns of smokers, R. J.  
13 Reynolds Tobacco Company, you collect it  
14 with a view toward determining what you  
15 can do to increase your smoking -- your  
16 sales; correct?

17 A. Data on brand choice?

18 Q. Yeah.

19 A. Just simply data on brand  
20 choice gives you absolutely no insight  
21 whatsoever on how to adjust your marketing  
22 programs or anything else to get  
23 competitive smokers. All that --

24 Q. Why?

25 A. All it tells you is how many  
26 people are smoking this brand and how many  
27 people are smoking that brand.

28 It doesn't tell you why they are  
29 smoking it, it doesn't tell you what you  
30 need to change about what you are doing to  
31 get them interested in your brands. It  
32 provides absolutely no insight in where to

15234

1 go from a marketing standpoint.

2 Q. But when you put that data  
3 together with marketing practices of  
4 certain brands of cigarettes, of marketing  
5 campaigns of brands of cigarettes, and you  
6 put that together with other factors, that  
7 gives you an idea why people are smoking  
8 that brand of cigarettes; right?

9 A. I'm going to repeat this again.

10 Q. No, sir, just answer my  
11 question.

12 A. You are -- you are intimating  
13 that raw data on brand choice provides you  
14 guidance as to how to change your  
15 marketing programs. It doesn't.

16 What provides you guidance is coming

17 up with an idea, gathering focus groups of  
18 franchising competitive smokers to get  
19 their opinion on that ad or promotion or a  
20 new pack design.

21 That's where you get the guidance on  
22 how to, you know, direct your marketing  
23 efforts to improve the performance of,  
24 say, Camel versus Marlboro.

25 But not from just raw data that says,  
26 you know, 21-year-old male smokes Marlboro  
27 and a -- I mean, that's not where you get  
28 the ideas --

29 Q. What, what --

30 A. -- or the direction.

31 Q. What kind of data do you gather  
32 on various age groups of smokers other  
15235

1 than -- of smokers other than raw data  
2 regarding brand choice today?

3 A. Today?

4 Q. Yes, sir.

5 A. Well, we -- we gather data from  
6 focus groups that, you know, I briefly  
7 alluded to where you get some idea. Could  
8 be a new ad campaign or new product idea  
9 where you maybe have ten or fifteen focus  
10 groups with competitive and what we call  
11 franchise smokers to get their reaction to  
12 your idea.

13 We do tracking studies on adult  
14 smokers, so you can say do estimates on  
15 how many 21- to 29-year-olds are smoking  
16 Winstons or Camels versus Marlboro.

17 We do different kind of quantitative  
18 research where you try and get smokers'  
19 perceptions of the idea in a way that you  
20 can tabulate and understand if an idea  
21 motivates them to consider your brand  
22 more, a variety of studies like that.

23 Q. So you gather certain raw data  
24 on the types and ages of people that smoke  
25 certain brands of cigarettes, you put it  
26 together with other data, such as focus  
27 groups. You put it together with what you  
28 know about certain brands of cigarettes,  
29 and then you reach conclusions as to  
30 strategies you can implement in order to  
31 sell to smokers; correct?

32 A. Yeah, we --  
15236

1 Q. So the raw data isn't by  
2 demographic groups, by age or otherwise as  
3 important; correct?

4 A. Yeah. Can be, yeah.

5 Q. Now, have you been able to  
6 think of where you can find this company  
7 policy all the way back into the 1970s  
8 articulated regarding not selling or  
9 marketing to youths?

10 A. Are you asking me do I know  
11 whether there is a manual?

12 Q. Yeah, or something written?

13 A. I don't know. There may be.

14 It's written today.

15 Q. You have never seen it, have  
16 you?

17 A. In what, 1997?

18 Q. Yes, sir.

19 A. No, but we didn't do it.

20 Q. You don't know whether or not  
21 R. J. Reynolds was studying the smoking  
22 patterns of high school students in 1959,  
23 do you, sir?

24 A. What do you mean by studying  
25 the smoking patterns?

26 Q. In any way.

27 A. In 1959?

28 Q. Yes, sir.

29 A. I have no idea what the company  
30 was doing in 1959.

31 Q. Let me show you Scott  
32 Plaintiffs' Exhibit 4405. This appears to

15237

1 be a letter by George McGovern from the  
2 William Esty Company to a Mr. W. A. Sugg  
3 at R. J. Reynolds Tobacco Company;  
4 correct?

5 A. Yes.

6 Q. Do you see the date on the  
7 right-hand side, December 9, 1959?

8 A. Right.

9 Q. And it says Youth Research  
10 Institute, 1959 Cigarette Smoking Study  
11 Among High School and College Students;  
12 correct?

13 A. That's what it says.

14 Q. Now, about the third paragraph  
15 of the letter reads: Preference-wise,  
16 Camel and Winston are shown as holding  
17 their share substantially --

18 A. I'm sorry, where?

19 Q. I'm sorry, third paragraph.

20 A. Oh, never mind. I'm getting  
21 bug-eyed.

22 Q. Reference-wise, Camel and  
23 Winston are shown as holding their share  
24 substantially constant while Salem  
25 increased its share, especially among high  
26 school students; correct?

27 A. That's what it says.

28 Q. And if you turn to the next  
29 page, would you read that statement on the  
30 next page?

31 A. The youth research study  
32 regarding cigarette smoking among 7,521

15238

1 high school and college students in eighty  
2 cities throughout the United States,  
3 October, November, 1959.

4 Q. I'm now going to show you  
5 Exhibit No. 4426 from a Mr. T. P. Haller  
6 to R. A. Blevins, Jr., dated April 9,  
7 1968.

8 Do you know the name Haller?

9 A. No.

10 Q. Do you know who R. A. Blevins,

11 Jr., is?

12 A. I think that's Ray Blevins.

13 Q. And who is Ray Blevins?

14 A. Well, Ray Blevins -- I'm not  
15 sure what he did in 1968. When I joined  
16 the company in '74, he worked in marketing  
17 research, as I recall. He's been retired  
18 for a number of years.

19 Q. Do you know a Mr. J. L.  
20 Claussen?

21 A. No.

22 Q. And what is the topic of this  
23 correspondence?

24 A. Teenage and adult smoking  
25 attitudes.

26 Q. Will you read the first  
27 sentence, please?

28 A. This will outline the kind of  
29 study we would like to do on a semi-annual  
30 basis to obtain consumer attitudes towards  
31 smoking, particularly as they apply to the  
32 health issue.

15239

1 Q. Now, would you look at the  
2 third paragraph, please, and read that  
3 sentence?

4 A. We plan to conduct sixteen  
5 hundred interviews. Half of the sample  
6 will -- something.

7 Q. Consist?

8 A. -- will consist of teenagers 12  
9 to 20 divided evenly by sex, and the other  
10 half will consist of adults. Nonsmokers  
11 as well as smokers will be included in  
12 this sample.

13 Q. And now, sir, will you read the  
14 second paragraph?

15 A. Oh. This study and its  
16 periodic nature will provide us with a  
17 tremendously useful insight into public  
18 attitudes and, most importantly, it will  
19 put light on the very vital teenage sector  
20 of the market.

21 All of this is urgently needed so  
22 that we can properly forecast our future  
23 requirements in leaf buying, plant  
24 facilities, manpower, et cetera.

25 Q. I'd now like to direct your  
26 attention, sir, to Scott Exhibit No. 5185.

27 I'm going to show you that exhibit,  
28 sir.

29 The cover page is a very dark cover  
30 page, but the second page reads R. J.  
31 Reynolds Tobacco Company, Winston Box  
32 Marketing Plant, November 1973?

15240

1 A. Right, uh-huh.

2 Q. At the bottom of that page is  
3 the name William Esty Company, Inc.;  
4 correct, sir?

5 A. Yes.

6 Q. Did you ever hear of the  
7 William Esty Company?

8 A. Yes.

9 Q. That's the same company whose  
10 letterhead apparently is represented in  
11 Exhibit 4405, the December 9, 1959, letter  
12 from McGovern to Sugg which reads Youth  
13 Resource Institute, 1959 Cigarette Smoking  
14 Study Among High School and College  
15 Students?

16 A. Yes.

17 Q. I would ask you to turn to the  
18 page which is numbered RJR 105854 of this  
19 exhibit. At the top it says Winston Box  
20 Discussion.

21 MR. CRIST:

22 Looks like that.

23 A. Oh, there we go.

24 Q. And ask you to read the first  
25 paragraph?

26 A. In 1973 --

27 Q. I'm sorry, would you read the  
28 second paragraph, "Both Winston"?

29 A. Both Winston and Marlboro box  
30 enjoy their strongest franchise among the  
31 under25-year-old smoker and especially the  
32 young male smoker.

15241

1 Q. It says: Other than age,  
2 however, the two brands have quite  
3 different user profiles; correct?

4 A. Yes.

5 Q. Would you go to the next page,  
6 which is RJR 105855? Top of the page it  
7 says "Winston Box"?

8 A. Yes.

9 Q. At the bottom of the page it  
10 says "William Esty Company, Inc., 11/73";  
11 correct, sir?

12 MR. CRIST:

13 I'm sorry, where are you?

14 A. Yes.

15 Q. Would you read under Background  
16 Data the paragraph numbered one?

17 A. The box smoker versus all  
18 smokers. While 7.2 percent of all adult  
19 smokers 18 and over smoke a cigarette in a  
20 box, 24.4 percent of those 14 to 20 years  
21 and 13.9 percent of those 21 to 24 years  
22 smoke a box cigarette.

23 Q. And would you go down the page  
24 to number four, Marlboro Box Profile?

25 A. Yes.

26 Q. And then you see a little graph  
27 down there and it says Percentage of  
28 Smokers Smoking Marlboro; correct?

29 A. Yes.

30 Q. What does it say below that?

31 A. There is a bunch of stuff.

32 Q. It says 14 to --

15242

1 A. I mean, right below it, 14- to  
2 20-year-old smokers.

3 Q. And then down there in the  
4 graph under Total Marlboro Smokers on the

5 left-hand side it says age, colon, 14 to  
6 15; correct?  
7 A. Right.  
8 Q. Box, 23.2; soft pack, 17.2.  
9 Correct?  
10 A. Yes.  
11 Q. And it says under age on the  
12 left-hand side, 16 to 17, 23.2 box, 13.1.  
13 Correct?  
14 A. Right.  
15 Q. Do you see 18 to 20 under age?  
16 A. Yes.  
17 Q. 16.8 box smokers for Marlboro.  
18 Correct?  
19 A. Yes.  
20 Q. Do you see an asterisk to a  
21 footnote at the bottom?  
22 A. Yes.  
23 Q. Would you read that footnote?  
24 A. Index reflects fact that the  
25 base is 14- to 20-year-olds only where  
26 Marlboro development is high versus all  
27 smokers.  
28 Q. Now, would you turn to the page  
29 of this exhibit numbered as RJR 105860,  
30 please? At the top it reads Winston Box  
31 Markets.  
32 A. 105860?

15243

1 Q. Yes, sir.  
2 A. With all the cities on it?  
3 Q. Yes, sir.  
4 Do you see Divisions on the left-hand  
5 side? Division No. 16 is New Orleans;  
6 correct?  
7 A. Yes.  
8 Q. And it shows major cities  
9 within the division as Baton Rouge,  
10 Louisiana; Lafayette, Louisiana;  
11 New Orleans, Louisiana; and Appaloosas,  
12 Louisiana. Correct?  
13 A. Correct.  
14 Q. Now, let me show you or refer  
15 you to Exhibit No. 4470.

MR. CRIST:

Is that an old one?

A. Is that one we have been  
through?

Q. No, sir. We started to look at  
it.

This is a memorandum dated December  
4, 1973, from Mr. Frank C. Colby?

MR. CRIST:

Frank G. Colby.

Q. I'm sorry, Frank G. Colby to R.  
A. Blevins, Jr., director of marketing  
plan. Do you see that, sir?

A. Uh-huh, yes.

Q. And that's an RJR interoffice  
memorandum; correct?

A. That's what it appears to be.

15244

Q. That's the Ray Blevins you

2 talked about earlier?

3 A. Yes.

4 Q. Head of marketing?

5 A. No, he wasn't the head of  
6 marketing.

7 Q. I'm sorry, he -- at this time,  
8 he was director of marketing planning?

9 A. Planning, yeah.

10 Q. And that means he was directing  
11 the efforts at planning for future  
12 marketing programs; correct?

13 A. No, not necessarily. I'm not  
14 sure what he was doing in '73. I believe  
15 he worked in marketing research, which  
16 would mean that he didn't -- wasn't  
17 developing marketing plans or marketing  
18 programs or ad campaigns or promotions.

19 Q. Okay. What makes you think  
20 that is what he was doing in 1973?

21 A. Well, because when I joined the  
22 company in '74, Ray Blevins was in  
23 marketing research, as I recall.

24 Q. Okay. You see the subject of  
25 this memorandum? Would you read it?

26 A. Yes. Cigarette Concept: To  
27 assure RJR a larger segment of the youth  
28 market, from Frank Colby, who worked in  
29 R&D.

30 Q. And that's a letter from Frank  
31 Colby from research and development to Ray  
32 Blevins, the director of marketing

15245

1 planning; correct?

2 A. Yes.

3 Q. Would you read the Summary,  
4 first paragraph?

5 A. It is -- it is suggested to  
6 develop a new RJR youth appeal brand based  
7 on the concept of going back at least  
8 halfway to the technological design of the  
9 Winston and other filter cigarettes of the  
10 1950s.

11 Q. And would you read the last  
12 sentence on the page?

13 A. Still -- still with -- is that  
14 where we are, "Still"?

15 Q. Yes.

16 A. Still with an old style filter,  
17 any desired additional nicotine kick could  
18 be easily obtained from pH regulation.

19 Q. Now I would like to refer you  
20 to Exhibit No. 4478.

21 Scott Exhibit No. 4478. You've  
22 seen this document before, I believe, sir;  
23 is that correct?

24 A. Yes, I have.

25 Q. And what is that document?

26 A. It's a -- yeah, I believe this  
27 is a presentation that was made at Hilton  
28 Head in -- marketing presentation in 1974.

29 Q. And it was made on September  
30 30th, 1974, to the board of directors;  
31 correct?

A. That's my understanding.

15246

1 Q. And would you read that first  
2 paragraph under Chart No. 1, Objective, in  
3 1975?

4 A. Our paramount marketing  
5 objective in 1975 and ensuing years is to  
6 reestablish RJR's share of marketing  
7 growth in the domestic cigarette industry.

8 Q. And do you understand this is  
9 an outline of charts that were shown to  
10 the board of directors?

11 A. Yes.

12 Q. Now, would you read Chart  
13 No. 2, the first sentence? Opportunity  
14 Areas it's titled.

15 A. We will speak to four key  
16 opportunity areas to accomplish this.

17 Q. And they are, number one --  
18 what was the number one opportunity area?

19 A. They are, number one, increase  
20 our young adult franchise.

21 And then it goes on with improve our  
22 metro market share, exploit the potential  
23 of the growing cigarette categories,  
24 develop new brands and line extensions  
25 with new product benefits or new  
26 personalities.

27 Q. And please read, sir, the next  
28 paragraph?

29 A. First let's look at the growing  
30 importance of the young adult in the  
31 cigarette market.

32 In 1960, this young adult market, the  
15247

1 14-to-24 age group, represented 21 percent  
2 of the population.

3 Q. Referring to the young adult  
4 market as 14 to 24; correct?

5 A. That's what's here.

6 Elsewhere in this document there is  
7 references to 18 to 24, and as we go  
8 through this document there's different  
9 references.

10 But that's what's here, yes.

11 Q. Right here it refers to the  
12 young adult market as aged 14 to 24;  
13 correct?

14 A. Yes.

15 Q. Would you read the next  
16 paragraph?

17 A. As seen by this chart, they  
18 will represent 27 percent of the  
19 population in 1975. They represent  
20 tomorrow's cigarette business.

21 As this 14-to-24 age group matures,  
22 they will account for a key share of the  
23 total cigarette volume for at least the  
24 next 25 years.

25 Q. Now, would you go on to the  
26 next page, the reference to Chart No. 4?

27 In the middle of the paragraph it  
28 says: In the 14-to-24 age category,

29 Philip Morris has 38 percent share and  
30 B&W, Brown & Williamson, has a 21 percent  
31 share; correct?  
32

A. Yeah, that's what it says.

15248

1 Q. It says before that that  
2 Philip Morris and Brown & Williamson have  
3 shown unusual strength among these younger  
4 smokers; correct?

5 A. Yes, it says that.

6 Q. Would you go down to Chart  
7 No. 6 --

8 A. Yes.

9 Q. -- and read that?

10 Our two major brands -- our being  
11 RJR's two major brands are Winston and  
12 Salem; correct?

13 A. That's what it says.

14 Q. And what does this report say  
15 about them?

16 A. It says: Our two major brands,  
17 Winston and Salem, show comparative  
18 weakness against Marlboro and Kool among  
19 these younger smokers.

20 Winston is at 14 percent in the  
21 14-to-24 age group, versus Marlboro at 33  
22 percent.

23 Salem is at 9 percent versus Kool at  
24 17 percent.

25 Again, our brand showed competitive  
26 strength in the 25 and older age groups.

27 Q. And then it goes on to say:  
28 This suggests slow market share erosion  
29 for us in the years to come unless the  
30 situation is corrected; correct, sir?

31 A. Yes, that's what it says.

32 Q. Read Chart No. 7, please,

15249

1 "Thus"?

2 A. Thus, our strategy becomes  
3 clear for our established brands,  
4 direct --

5 Q. Number one it says; right?

6 A. Number one, direct advertising  
7 appeal to younger smokers while being true  
8 to the brand's basic product attributes,  
9 taste for Winston, refreshment for Salem,  
10 and without alienating the brand's current  
11 franchise.

12 Q. Sir, I'd like to refer you to  
13 Document Scott Plaintiffs' Exhibit 5189.  
14 Have you seen that document before, sir?

15 A. I don't think I've seen this  
16 one.

17 Q. It says at the top --

18 A. I don't remember.

19 Q. I'm sorry.

20 A. I don't remember seeing it.

21 Q. It says at the top R. J.  
22 Reynolds Tobacco Company Domestic  
23 Operating Goals; correct?

24 A. That's what it says.

25 Q. On page two at the top it's

26 dated November 26, 1974; correct?  
27 A. Yes.  
28 Q. Would you read the Marketing  
29 Goals, please, paragraph?  
30 A. I'm sorry, where?  
31 Q. I'm sorry. Page one.  
32 A. Oh, okay. I was on the wrong  
15250

1 page.  
2 Q. I'm just trying to establish  
3 the date. This is not on page one.

4 A. Oh, primary -- I'm sorry.  
5 Primary goal in 1975 and in the ensuing  
6 years to reestablish RJR's share of growth  
7 in the domestic cigarette industry.

8 Q. And it says: This will be done  
9 by the following, colon, and the first  
10 thing it says is increase our young adult  
11 franchise.

12 And would you read the next sentence?

13 A. It says increase our young  
14 adult franchise 14-to-24 age group, in  
15 1960 was 21 percent of population, in 1975  
16 will be 27 percent.

17 Q. And it says as they mature,  
18 this will -- will account for key share of  
19 cigarette volume for the next 25 years;  
20 correct?

21 A. Yes.

22 Q. Similar to the language in  
23 the -- the Winston -- I'm sorry, the  
24 Hilton Head presentation; correct?

25 A. Yes.

26 Q. Sir, I'd like to refer you now  
27 to Plaintiffs' Exhibit No. 4483.

28 January 21, 1975, RJR Secret No. 204;  
29 correct?

30 A. Yes.

31 Q. It's a document from Mr. J. F.  
32 Hind to Mr. C. A. Tucker; correct?  
15251

1 A. Yes.

2 Q. Do you know Jim Hind?

3 A. I knew him. He was --

4 Q. What did he do?

5 A. He was one of the key marketing  
6 people.

7 Q. And who was Mr. C. A. Tucker?

8 A. Charlie Tucker was the head of  
9 marketing and sales at that time.

10 Q. And this document refers to a  
11 recommendation to expand nationally a  
12 successfully tested, quote, Meet the Turk,  
13 end quote, ad campaign and new Marlboro  
14 type blend; correct?

15 A. That's what it says.

16 Q. And it says that this is  
17 another step to meet our marketing  
18 objective, colon, which is -- would you  
19 read that where it says "to increase"?

20 A. It says: To meet our marketing  
21 objective, colon, to increase our young  
22 adult franchise. To ensure increased and

23 longer term growth for Camel filter, the  
24 brand must increase its share of  
25 penetration among the 14-to-24 age group,  
26 which have a new set of more liberal  
27 values which represent tomorrow's  
28 cigarette business.

29 Q. You would agree that Camel was  
30 the brand that was chosen to go after the  
31 young adult market; correct?

32 A. I -- no, I don't remember in

15252

1 that singular kind of way you are  
2 describing it. I mean, it was in -- in  
3 the repositioning efforts on Camel, they  
4 wanted to grow share among younger adults,  
5 18- to 24-year-olds.

6 Q. Who at R. J. Reynolds Tobacco  
7 Company was responsible for the Joe Camel  
8 marketing plan that began as you testified  
9 in about 1987?

10 A. No, no, the campaign didn't get  
11 launched until '88.

12 Q. Okay.

13 A. Just to --

14 Q. The development took place  
15 in --

16 A. I don't know exactly when they  
17 started --

18 Q. Sometime before 1988?

19 A. Yeah. I was at Nabisco in '87.

20 Q. So you were in the foods in  
21 '87?

22 A. Yeah, uh-huh.

23 Q. Presumably if the Joe Camel  
24 campaign began in 1988, the development of  
25 the campaign took place before 1988;  
26 right?

27 A. Right.

28 Q. Who was responsible at R. J.  
29 Reynolds?

30 A. Lynn Beasley.

31 Q. And was that campaign quite  
32 successful?

15253

1 A. Yeah, I think it was a great  
2 campaign.

3 Q. And the Joe Camel campaign  
4 significantly increased the share of  
5 Reynolds' -- I'm sorry, of the Camel sales  
6 in the market; correct?

7 A. Well, the -- the campaign -- I  
8 think that oversimplifies it.

9 Yeah, the campaign started as a 75th  
10 Anniversary thing, and I -- somewhere in  
11 the fall of '88, as I recall.

12 Yeah, the Camel campaign, the  
13 repositioning that came with that  
14 campaign, other promotional ideas that  
15 came out of that, the Camel Cash, there  
16 was a whole bunch of things that happened  
17 around new brand styles like Camel Wides  
18 and so forth, a number of things that  
19 happened, that if you looked at and said

20 the brand was repositioned and started to  
21 grow over time from 1988, I think it's  
22 improvements in product, I think there's a  
23 brunch of things that went on there.

24 So I think it -- I don't mean this  
25 disrespectfully. It oversimplifies this  
26 to say, well, you launch an ad campaign  
27 and you improve the brand. There is a lot  
28 more to it than just the ad campaign.

29 Q. You know that as a result --  
30 Joe Camel was a cartoon character camel;  
31 correct?

32 A. He's been characterized as a  
15254  
cartoon character.

1 Q. And you know that as a result  
2 of the Joe Camel cartoon campaign, there's  
3 been a great deal of criticism lodged  
4 against R. J. Reynolds Tobacco Company?

5 A. There was, yes.

6 Q. And as a matter of fact, you  
7 discontinued that campaign?

8 A. I was the CEO when we  
9 discontinued Joe Camel, yes.

10 Q. And you gave the order;  
11 correct?

12 A. Well, Lynn Beasley and Fran  
13 Creighton and I talked about it, and we  
14 said we're going to pull it from the  
15 marketplace.

16 Q. And at that time, you were  
17 reporting to Mr. Steve Goldstone?

18 A. That's right.

19 Q. And you told Mr. Goldstone,  
20 after quite a bit -- period of time of  
21 research and decision-making, that the  
22 campaign was going to be pulled; correct?

23 A. Well, I told Steve we were  
24 pulling the campaign and moving on.

25 Q. And you know that the criticism  
26 lodged against the Joe Camel campaign from  
27 outside of the company was that Joe Camel  
28 was reaching a group of underage smokers;  
29 correct?

30 A. Well, there was -- I mean,  
31 there was a lot of criticism, and the core  
32 15255

criticism was that the company designed  
that campaign to specifically go after  
kids, and that's a complete falsehood.  
And that is to me the -- if you want to  
distill down what the core accusation was,  
that was it.

7 Q. You see from the documents we  
8 just looked at at least through the  
9 mid1980s that R. J. Reynolds Tobacco  
10 Company was studying the below 18 market  
11 group; correct?

12 A. I think that's a  
13 mischaracterization. I think most or  
14 virtually all of the documents you have  
15 shown me are off of the same source, this  
16 NFO data where they are -- and which we

17 have talked about about earlier where they  
18 are saying here is the brand choices of  
19 smokers, and they included in that data  
20 people or smokers who were 14 or 16 or 17,  
21 whatever was identified.

22 And I think it's inappropriately  
23 expansive to call that studying. If we  
24 are going to study a segment of the market  
25 or competitive smokers as a segment or  
26 something, you do more than tabulate what  
27 brand choices are. You interact in  
28 surveys about attitudes and perceptions of  
29 ideas that exist and new ideas. You have  
30 extensive focus groups.

31 And to me, the record clearly shows  
32 through this whole period that the company

15256

1 wasn't doing marketing research on  
2 14-year-olds. Because if that were the  
3 case, you'd have more witnesses talking  
4 about how they were in a focus group in  
5 1975 or 1980 than you could shake a stick  
6 at.

7 And the reason you don't have that  
8 kind of data is because that kind of  
9 research was never done up until around  
10 what appears to me to be 1980, there was  
11 this NFO data, and then that stopped.

12 But there was never any market --  
13 there has never been any marketing  
14 research shown to me over any of this  
15 period of where the company engaged in  
16 studying, as you characterize it, 14- or  
17 15- or 16-year-olds in extensive marketing  
18 research

19 Q. And each one of those documents  
20 you just saw characterized studies of 14-  
21 to 17-year-old age groups, correct, by  
22 your marketing department?

23 A. They were tabulations of NFO  
24 data. That's what I've seen there  
25 essentially laid out in -- in the memos  
26 that you showed me.

27 And to my knowledge, that is what the  
28 attachment is to Gerry Long's memo to Ed  
29 Horrigan that you don't have here was a  
30 tabulation of NFO data.

31 Q. And it was ordered in 1983 and  
32 1984 to quit looking at data regarding the

15257

1 14- to 17-year-olds; is that correct?

2 A. All I know is I've never seen  
3 any data past this sort of 1980 or so  
4 period. So I assume that, you know,  
5 whatever, twenty or eighteen years ago  
6 people stopped the NFO data, and it  
7 appears that it was in the '80, '81, early  
8 '80s period.

9 Q. Now, you know that there were  
10 considered scientific studies by the  
11 scientific and medical community that  
12 suggested that the Joe Camel campaign was  
13 reaching very young people; correct?

A. Scientific?

Q. Yes, sir.

A. I believe there was a study which fell into disrepute that was published in a scientific or medical journal, but I would -- it would be a stretch to call that a scientific study.

(End of videotaped presentation.)

MR. LEGER:

And Your Honor --

THE COURT:

We will recess for lunch at this point, ladies and gentlemen. 1:30 by the wall clock.

(In open court without a jury present:)

THE COURT:

The jury has left the courtroom.

Anything for the record by plaintiffs

15258  
counsel?  
MR. RUSS HERMAN:  
Yes, Your Honor.  
May it please the Court --  
MR. WITTMANN:  
May I be excused, Your Honor?  
MR. RUSS HERMAN:  
Wait one second, Philip.  
Now that we have heard the testimony  
and it's been played to the jury by  
Mr. Schindler, the CEO of RJR, we intend  
to issue at his invitation an instant  
subpoena for the names, addresses and  
dates of all individuals appearing in RJR  
focus groups regarding the Joe Camel  
campaign and Meet the Turk campaign.

I'm giving counsel advance notice.

MR. WITTMANN:

Thank you, Mr. Herman.

THE COURT:

Anything else for the record by plaintiffs counsel?

Defense counsel, anything for the record?

MR. RUSS HERMAN:

Oh, and we also intend to read the answers of RJR to our complaint to the jury today, and we want them prepared for that.

THE COURT:

Anything by defense counsel for the record?

15259  
MR. LONG:  
No, Your Honor.  
THE COURT:  
We will recess until 1:30.  
I will give you five minutes to get  
ready to do the Fisher deposition cuts.  
MR. WILLIAMS:  
Thank you, Your Honor.  
(Whereupon, the hearing recesses at  
12:03 p.m.)

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1 REPORTER'S CERTIFICATE  
2

3 I, NICHOLAS A. MARRONE, CCR, Registered  
4 Merit Reporter, do hereby certify that the foregoing  
5 proceedings were reported by me in shorthand and  
6 transcribed under my personal direction and  
7 supervision, and is a true and correct transcript,  
8 to the best of my ability and understanding.

9 That I am not of counsel, not related to  
10 counsel or the parties hereto, and not in any way  
11 interested in the outcome of this matter.

12  
13  
14 NICHOLAS A. MARRONE (CCR 21011)  
15 CERTIFIED COURT REPORTER  
16 REGISTERED MERIT REPORTER  
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